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Report of the United Nations Commission on International Trade Law

Forty-seventh session
(7-18 July 2014)

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Supplement No. 17

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Note

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I. Introduction

1. The present report of the United Nations Commission on International Trade Law (UNCITRAL) covers the forty-seventh session of the Commission, held in New York from 7 to 18 July 2014.

2. Pursuant to General Assembly resolution 2205 (XXI) of 17 December 1966, this report is submitted to the Assembly and is also submitted for comments to the United Nations Conference on Trade and Development.

II. Organization of the session

A. Opening of the session

3. The forty-seventh session of the Commission was opened by the Under-Secretary-General for Legal Affairs and Legal Counsel of the United Nations, Mr. Serpa Soares, on 7 July 2014.

B. Membership and attendance

4. The General Assembly, in its resolution 2205 (XXI), established the Commission with a membership of 29 States, elected by the Assembly. By its resolution 3108 (XXVIII) of 12 December 1973, the Assembly increased the membership of the Commission from 29 to 36 States. By its resolution 57/20 of 19 November 2002, the General Assembly further increased the membership of the Commission from 36 States to 60 States. The current members of the Commission, elected on 3 November 2009, on 15 April 2010, on 14 November 2012 and on 14 December 2012 are the following States, whose term of office expires on the last day prior to the beginning of the annual session of the Commission in the year indicated: Algeria (2016), Argentina (2016), Armenia (2019), Australia (2016), Austria (2016), Belarus (2016), Botswana (2016), Brazil (2016), Bulgaria (2019), Cameroon (2019), Canada (2019), China (2019), Côte d'Ivoire (2019), Colombia (2016), Croatia (2016), Denmark (2019), Ecuador (2019), El Salvador (2019), Fiji (2016), France (2019), Gabon (2016), Georgia (2015), Germany (2019), Greece (2019), Honduras (2019), Hungary (2019), India (2016), Indonesia (2019), Iran (Islamic Republic of) (2016), Israel (2016), Italy (2016), Japan (2019), Jordan (2016), Kenya (2016), Kuwait (2019), Liberia (2019), Malaysia (2019), Mauritania (2019), Mauritius (2016), Mexico (2019), Namibia (2019), Nigeria (2016), Pakistan (2016), Panama (2019), Paraguay (2016), Philippines (2016), Poland (2016), Republic of Korea (2019), Russian Federation (2019), Sierra Leone (2019), Singapore (2019), Spain (2016), Switzerland (2019), Thailand (2016), Turkey (2016), Uganda (2016), United Kingdom of Great Britain and Northern Ireland (2019), United States of America (2016), Venezuela (Bolivarian Republic of) (2016) and Zambia (2019).

5. With the exception of Botswana, Côte d'Ivoire, Fiji, Gabon, Indonesia, Jordan, Malaysia, Mauritania and Sierra Leone, all the members of the Commission were represented at the session.

6. The session was attended by observers from the following States: Belgium, Chile, Cyprus, Czech Republic, Democratic Republic of the Congo, Finland, Guatemala, Libya, Netherlands, Norway, Peru, Qatar, Romania, Slovakia, Sweden and Viet Nam.

7. The session was also attended by observers from Holy See, the State of Palestine and the European Union.

8. The session was also attended by observers from the following international organizations:

(a) *United Nations system*: International Maritime Organization (IMO), Office of Legal Affairs (OLA), Office of the High Commissioner for Human Rights (OHCHR), United Nations Development Programme (UNDP), the World Bank and the World Intellectual Property Organization (WIPO);

(b) *Intergovernmental organizations*: Caribbean Development Bank, European Bank for Reconstruction and Development (EBRD), Hague Conference on Private International Law (the Hague Conference), International Cotton Advisory Committee, International Development Law Organization (IDLO), International Institute for the Unification of Private Law (Unidroit), Maritime Organization of West and Central Africa (MOWCA), Organization for Economic Cooperation and Development (OECD), Organization of American States (OAS) and Permanent Court of Arbitration (PCA);

(c) *Invited non-governmental organizations*: African Center for Cyberlaw and Cybercrime Prevention, American Arbitration Association and International Centre for Dispute Resolution (AAA/ICDR), American Bar Association (ABA), American Society of International Law (ASIL), Asia-Pacific Regional Arbitration Group (APRAG), Asociación Americana de Derecho Internacional Privado, Association for the Promotion of Arbitration in Africa, Centre for International Environmental Law (CIEL), China International Economic and Trade Arbitration Committee (CIETAC), China Society of Private International Law, Comisión Interamericana de Arbitraje Comercial (CIAC-IACAC), Commercial Finance Association (CFA), European Communities Trade Mark Association, European Law Students' Association (ELSA), German Institution of Arbitration (DIS), Institute of Commercial Law, International Bar Association (IBA), International Chamber of Commerce (ICC), International Insolvency Institute (III), International Institute for Conflict Prevention and Resolution, International Law Institute, International Mediation Institute, International Swaps and Derivatives Association (ISDA), Inter-Pacific Bar Association (IPBA), Jerusalem Arbitration Center, Madrid Court of Arbitration, New York State Bar Association (NYSBA), P.R.I.M.E. Finance (P.R.I.M.E), Regional Centre for International Commercial Arbitration (Lagos, Nigeria) and Union Internationale des Avocats (UIA).

9. The Commission welcomed the participation of international non-governmental organizations with expertise in the major items on the agenda. Their participation was crucial for the quality of texts formulated by the Commission, and the Commission requested the Secretariat to continue to invite such organizations to its sessions.

C. Election of officers

10. The Commission elected the following officers:

Chair:	Mr. Choong-hee HAHN (Republic of Korea)
Vice-Chairs:	Ms. Maria-Chiara MALAGUTI (Italy) Mr. Salim MOOLLAN (Mauritius) Mr. Hrvoje SIKIRIĆ (Croatia)
Rapporteur:	Ms. Maria del Pilar ESCOBAR PACAS (El Salvador)

D. Agenda

11. The agenda of the session, as adopted by the Commission at its 984th meeting, on 7 July, was as follows:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Consideration of issues in the area of arbitration and conciliation:
   (a) Finalization and approval of a draft convention on transparency in treaty-based investor-State arbitration;
   (b) Establishment and functioning of the transparency repository;
   (c) Preparation of a guide on the 1958 New York Convention;
   (d) International commercial arbitration moot competitions.
5. Micro-, small- and medium-sized enterprises: progress report of Working Group I.
6. Online dispute resolution: progress report of Working Group III.
7. Electronic commerce: progress report of Working Group IV.
8. Insolvency law: progress report of Working Group V.
9. Security interests: progress report of Working Group VI.
10. Technical assistance to law reform.
11. Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts.
12. Status and promotion of UNCITRAL legal texts.
13. Coordination and cooperation:
   (a) General;
   (b) Coordination and cooperation in the field of security interests;
   (c) Reports of other international organizations;

(d) International governmental and non-governmental organizations invited to sessions of UNCITRAL and its Working Groups.

14. UNCITRAL regional presence.

15. Role of UNCITRAL in promoting the rule of law at the national and international levels.

16. Planned and possible future work.

17. Relevant General Assembly resolutions.

18. Other business.

19. Date and place of future meetings.

20. Adoption of the report of the Commission.

E. Adoption of the report

12. The Commission adopted the present report by consensus at its 989th meeting on 9 July 2014, 990th meeting on 10 July 2014, 994th meeting on 14 July 2014, 995th meeting on 16 July 2014 and 997th meeting on 18 July 2014.

III. Consideration of issues in the area of arbitration and conciliation

A. Finalization and approval of a draft convention on transparency in treaty-based investor-State arbitration

1. Introduction

13. The Commission recalled the decision made at its forty-first session,[1] in 2008, and forty-third session,[2] in 2010, namely that the topic of transparency in treaty-based investor-State arbitration should be dealt with as a matter of priority immediately after completion of the revision of the UNCITRAL Arbitration Rules.[3] At its forty-third session, the Commission entrusted its Working Group II (Arbitration and Conciliation) with the task of preparing a legal standard on that topic.[4]

14. At its forty-sixth session, in 2013, the Commission adopted the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (the "Rules on Transparency" or the "Rules"), together with the UNCITRAL Arbitration Rules

[1] *Official Records of the General Assembly, Sixty-third Session, Supplement No. 17* and corrigendum (A/63/17 and Corr.1), para. 314.

[2] Ibid., *Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 190.

[3] For the text of the UNCITRAL Arbitration Rules (1976), see *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17* (A/31/17). For the text of the UNCITRAL Arbitration Rules (as revised in 2010), see *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), annex I.

[4] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 190.

(with new article 1, paragraph 4, as adopted in 2013).[5] At that session, the Commission recorded consensus to entrust the Working Group with the task of preparing a convention on the application of the Rules on Transparency to existing investment treaties (the "transparency convention" or the "convention"), taking into account that the aim of the convention was to give those States that wished to make the Rules on Transparency applicable to their existing investment treaties an efficient mechanism to do so, without creating any expectation that other States would use the mechanism offered by the convention.[6]

15. At its current session, the Commission had before it the reports of Working Group II (Arbitration and Conciliation) on the work of its fifty-ninth session, held in Vienna from 16 to 20 September 2013, and its sixtieth session, held in New York from 3 to 7 February 2014 (A/CN.9/794 and A/CN.9/799, respectively). It also had before it the text of the draft convention on transparency in treaty-based investor-State arbitration (the "draft convention on transparency" or the "draft convention"), as it resulted from the second reading of the draft convention at the sixtieth session of the Working Group and as contained in document A/CN.9/812.

16. The Commission took note of the summary of the deliberations on the draft convention on transparency that had taken place at the fifty-ninth and sixtieth sessions of the Working Group. The Commission also took note of the comments on the draft convention on transparency as set out in document A/CN.9/813 and its addendum.

2. Consideration of the draft convention on transparency

Preamble

17. The Commission considered the preamble of the draft convention on transparency as set out in paragraph 5 of document A/CN.9/812 and recalled the deliberations of the Working Group on the preamble (see A/CN.9/794, paras. 33-43, and A/CN.9/799, paras. 16-20). The Commission further endorsed the agreement of the Working Group at its fifty-ninth and sixtieth sessions not to include in the preamble the wording of the mandate given by the Commission to the Working Group (see para. 14 above), but rather that the proposal for the General Assembly resolution recommending the convention contain the wording as set out in paragraph 41 of document A/CN.9/794.

18. The Commission considered that the inclusion of the word "investment" after the word "concluded" in the fourth paragraph of the preamble (see A/CN.9/812, para. 7) improved the drafting and ought to be retained.

19. The Commission took note of a suggestion to add a paragraph to the end of the preamble as follows: "Noting also article 1(2) and (9) of the UNCITRAL Rules on Transparency," (see A/CN.9/812, para. 7). After discussion, that proposal was agreed.

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[5] Ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 128 and annexes I and II.

[6] Ibid., para. 127.

Approval of the preamble

20. After discussion, the Commission approved the substance of the preamble as contained in paragraph 5 of document A/CN.9/812, inclusive of a new paragraph as set out in paragraph 19 above.

Draft article 1: Scope of application

21. The Commission considered article 1 of the draft convention on transparency as set out in paragraph 5 of document A/CN.9/812 and recalled the deliberations of the Working Group on that article (see A/CN.9/794, paras. 44-82, and A/CN.9/799, paras. 21-26).

22. The Commission affirmed the decision of the Working Group at its sixtieth session to use the term "investment treaty" in relation to the underlying investment treaties to which the convention would apply (see A/CN.9/799, para. 26).

Approval of article 1

23. After discussion, the Commission approved the substance of article 1 as contained in paragraph 5 of document A/CN.9/812.

Draft article 2: Application of the UNCITRAL Rules on Transparency

24. The Commission considered article 2 of the draft convention on transparency as set out in paragraph 5 of document A/CN.9/812 and recalled the deliberations of the Working Group on that article (see A/CN.9/794, paras. 89-114, and A/CN.9/799, paras. 29-47 and 88-128).

Relation between the transparency convention and the investment treaties to which it would apply

25. The Commission unanimously confirmed that it shared the view expressed by a great number of delegations at the fifty-ninth session of the Working Group, namely that the transparency convention, upon coming into force, would constitute a successive treaty creating new obligations pursuant to article 30 of the Vienna Convention on the Law of Treaties (1969)[7] (the "Vienna Convention") (see A/CN.9/794, para. 22).

Paragraph (1)

26. The Commission considered a suggestion to delete the language "[, as they may be revised from time to time,]", in light of the text in article 2(3), and article 3(2), which addressed the application of the Rules on Transparency in the event of a revision to the Rules. It was clarified that deleting that language in paragraph (1) would remove an ambiguity in the Rules as to which version of the Rules would apply when the respondent State had made a reservation in respect of the application of the most recent version under article 3(2).

27. After discussion, it was agreed to delete the square bracketed language "[, as they may be revised from time to time,]" in paragraphs (1) and (2).

[7] United Nations, *Treaty Series*, vol. 1155, No. 18232.

Paragraph (2)

28. Following its decision as set out in paragraph 27 above, the square bracketed phrase "[, as they may be revised from time to time,]" would also be deleted from paragraph (2).

29. A proposal was made to modify the drafting of paragraph (2) to require explicit written agreement by the claimant to the application of the Rules on Transparency. That proposal would modify the latter half of paragraph (2) as follows: "(...) under article 3(1), provided that the claimant agrees explicitly and in writing, to the application (...)". That proposal was not supported on the basis that article 2 of the draft convention addressed the application of the Rules on Transparency, which themselves set out the mechanics of a claimant's agreement in articles 1(2) and (9), and that requiring a specific form of agreement under the convention was not desirable.

30. A clarification was sought as to why the word "an" preceded the phrase "investor-State arbitration" in paragraph (2), whereas the word "any" preceded that phrase in paragraph (1). It was clarified that the word "any" was deliberately used in paragraph (1) to reflect that that paragraph applied to all arbitrations falling within its scope, whereas in paragraph (2), the use of the word "an" reflected that that paragraph applied to specific arbitrations upon an offer by the respondent and an acceptance of that offer by the claimant.

Paragraph (3)

31. Further to its decision to delete the words "as they may be revised from time to time" from paragraphs (1) and (2) (see para. 27 above), it was agreed to retain paragraph (3) as providing useful clarity in respect of the application of the Rules following an amendment thereto.

32. It was furthermore agreed to delete the reference to an arbitral tribunal, so that paragraph (3) would read in full: "Where the UNCITRAL Rules on Transparency apply pursuant to paragraph 1 or 2, the most recent version of those Rules as to which the respondent has not made a reservation pursuant to article 3(2) shall apply."

Paragraph (5)

33. It was recalled that at the fifty-ninth and sixtieth sessions of the Working Group, it had been agreed that a claimant should not be permitted to avoid application of the Rules on Transparency by invoking a most favoured nation (MFN) clause, and nor should a claimant be permitted to invoke an MFN clause to make the Rules on Transparency applicable in circumstances where the Rules would not otherwise apply (see A/CN.9/794, paras. 118-121, and A/CN.9/799, paras. 40-46, 88-96 and 123-124).

34. The Commission confirmed that the deliberations on MFN clauses in the context of the convention should not be interpreted as taking, and did not take, a position on the question of whether MFN clauses applied to dispute settlement procedures under investment treaties.

35. The Commission considered whether to delete the words "[or non-application]", in order to improve clarity of drafting in paragraph (5). A concern

was raised that removing that language would change the intended meaning of the provision, namely that paragraph (5) should also preclude a claimant applying the Rules on Transparency when the Rules would not otherwise apply under the convention. To address that concern, it was proposed to rephrase paragraph (5) as follows: "The Parties to this Convention agree that a claimant may not invoke a most favored nation provision to seek to apply, or avoid the application of, the UNCITRAL Rules on Transparency under this Convention".

36. The suggestion to address in paragraph (5) application of different versions of the Rules did not receive support.

37. After discussion, the proposal set out in paragraph 35 above was approved in substance by the Commission.

Paragraph headings

38. It was said that the heading "Unilateral offer of application" preceding paragraph (2) should be reconsidered since an offer was by its nature unilateral and moreover that heading did not clarify that the offer could only be made by the respondent under that paragraph. A suggestion was consequently made to replace that heading with the heading "Irrevocable offer". That suggestion did not receive support, in particular because it was said that it would be at odds with article 4, paragraph (1), which provided that a reservation could be made at any time; hence an offer under article 2(2) was not necessarily irrevocable.

39. Another proposal was made to replace the heading with the word "Offer", in light of the self-evidently unilateral nature of any offer.

40. A third proposal was made to rephrase the heading such that it made clear that the offer was of unilateral application by a treaty Party; in other words, that only one treaty Party had made the offer to apply the Rules on Transparency and that it would be for the claimant to accept that offer. In response, it was said that the heading "Offer of unilateral application" might not convey clearly that intended meaning.

41. It was furthermore suggested that the term "unilateral offer of application" provided a helpful contrast to the heading preceding paragraph (1), namely "Bilateral or multilateral application", and that as such it provided a clear indication of the content and purposes of the two paragraphs.

42. After discussion, it was agreed to retain the heading "Unilateral offer of application" preceding paragraph (2).

43. The Commission approved the proposed headings for all other paragraphs of article 2 as set out in paragraph 5 of document A/CN.9/812.

Approval of article 2

44. After discussion, the Commission approved the substance of article 2 as contained in paragraph 5 of document A/CN.9/812, and as modified by paragraphs 27, 28, 31, 32 and 37 above.

Draft article 3: Reservations

45. The Commission considered article 3 of the draft convention on transparency as set out in paragraph 5 of document A/CN.9/812. The Commission noted that the language set out therein had been approved in substance at the sixtieth session of the Working Group (see A/CN.9/799, paras. 51-55 and 97-128; for deliberations on article 3 at the fifty-ninth session of the Working Group, see A/CN.9/794, paras. 115-147).

46. The Commission furthermore confirmed the unanimous agreement of the Working Group that it would be unacceptable for a Party to the transparency convention to accede to the transparency convention and then carve out its entire content by use of reservations under article 3 (see A/CN.9/794, paras. 131-133). The Commission further took note of the clear indication of consensus at the fifty-ninth and sixtieth sessions of the Working Group that the only reservations permitted under the convention ought to be those enumerated in the transparency convention (see A/CN.9/794, para. 147, and A/CN.9/799, para. 55).

Paragraph (1)

Subparagraph (a)

47. A proposal was made to modify subparagraph (a) with three amendments, namely: (a) to add the words "to which it is a contracting party" after the phrase "a specific investment treaty"; (b) to replace the words "date that investment treaty was concluded" with "date that investment treaty was signed by the Party making the reservation"; and (c) to add the words "in cases where it is the respondent in an arbitration brought under that treaty" to the end of the subparagraph.

48. After discussion, it was said that that proposal might create additional complexity in some respects, and a revised proposal was made to replace subparagraph (a) as follows: "It shall not apply this Convention to investor-State arbitration under a specific investment treaty, identified by title and name of contracting parties to that investment treaty." A suggestion to insert the word "the" before the phrase "contracting parties" in that revised proposal, and consequently also in article 8(1), was agreed.

49. After discussion, the revised proposal for article 3(1)(a) as set out in paragraph 48 above was agreed.

50. A separate proposal was made to replace, in the chapeau, the words "A Party may declare that:" with the phrase "A party may make the following reservations:". That proposal did not receive support since the declaration referred to in that phrase was the mechanism through which a reservation would be made.

Paragraph (2)

51. The Commission agreed to replace the phrase "amendment to" in the phrase "amendment to the UNCITRAL Rules on Transparency", with "a revision of", in order to align the drafting more closely with other provisions of the draft convention and the Rules. It was consequently agreed that the word "amendment" as it appeared later in that provision would also be replaced with the word "revision". For the sake of drafting consistency, it was agreed to replace the word "will" appearing before

the words "not apply" by the word "shall". In all other respects it was agreed to retain paragraph (2) in the form set out in paragraph 5 of document A/CN.9/812.

52. It was confirmed that the UNCITRAL secretariat would follow its usual practice of notifying all States of the revision of the Rules.

Approval of article 3

53. After discussion, the Commission approved the substance of article 3 as contained in paragraph 5 of document A/CN.9/812, and as modified by paragraphs 49 and 51 above and paragraph 73 below.

Draft article 4: Formulation of reservations

54. The Commission considered article 4 of the draft convention on transparency as set out in paragraph 5 of document A/CN.9/812. The Commission recalled the deliberations of the Working Group on that article (see A/CN.9/794, paras. 123-126 and 149-152, and A/CN.9/799, paras. 56-69, 134(a) and 136).

New paragraph to be inserted after paragraph 3

55. A proposal was made to add a new paragraph after paragraph (3) in article 4, as follows: "Reservations made at the time of ratification, acceptance or approval of this Convention or accession thereto shall take effect simultaneously with the entry into force of this Convention in respect of the Party concerned." It was said that such a provision would be more consistent with other timelines provided for in article 4.

56. After discussion, that proposal was agreed in substance.

Paragraphs (2) and (3)

57. It was said that the order of paragraphs (2) and (3) should be inverted to reflect the fact that confirmations of reservations were first mentioned in paragraph (3). After discussion, it was agreed that paragraph (2) would be better placed as the penultimate paragraph of article 4.

Paragraph (4)

58. A suggestion was made to clarify the drafting of paragraph (4) by adding the words "made by a Party" following the words "Except for a reservation". That proposal was agreed.

Paragraph (5)

59. The Commission agreed to retain paragraph (5) in the form set out in paragraph 5 of document A/CN.9/812, subject to its further consideration of, and any consequential amendments that might be required by, paragraph (6).

Paragraph (6)

60. The Commission affirmed the agreement of the Working Group that a withdrawal providing for greater transparency ought to have immediate effect, whereas all other modifications ought to take effect twelve months after receipt by

the depositary, as a measure to avoid abuse (see A/CN.9/794, paras. 153-157, and A/CN.9/799, paras. 63-69, 134(a) and 136).

61. A concern was raised that the language set out in paragraph (6) referring to a modification to a reservation "with the effect of making (...) a withdrawal" of a reservation was difficult to interpret and might in any event be unnecessary.

62. A clarification was sought as to whether, when a Party to the convention deposited a list of a number of treaties as a single "reservation" under article 3(1)(a), that list would in practice constitute a single reservation, or separate reservations in respect of each treaty listed. It was agreed that such a list would constitute separate reservations, and the Commission decided to consider further whether such an understanding ought to be made explicit in the convention itself.

63. As a corollary to that determination, it was said that "modifications" of a reservation to the transparency convention would no longer be an appropriate term, because in the event a number of treaties had been listed pursuant to article 3(1)(a), the addition or removal of any specific investment treaty from that list would constitute either a new reservation, or the withdrawal of a reservation.

64. Having regard to those clarifications, the Commission considered a proposal to amend paragraph (6) as follows: "If after this Convention has entered into force for a Party, that Party withdraws a reservation under article 3(1)(a) or (b) with respect to a specific investment treaty or a specific set of arbitration rules or procedures, or a reservation under article 3(1)(c) or (2), such withdrawal shall take effect upon receipt of the notification by the depositary."

65. It was said that that proposal would obviate the need for reference to modifications in paragraph (5), as well as in article 5, and would result in the deletion of paragraph (7) as redundant.

Article 4(6) and new article 3(3)

66. After discussion, a revised proposal was made that was said likewise to obviate the need for references to modifications even where a Party was to deposit multiple reservations within the same instrument and withdraw only one such reservation.

67. That revised proposal read as follows: "When a party makes a declaration under article 3, each investment treaty or set of arbitration rules or procedures to which the declaration refers, and any part of the declaration made under paragraph 1(c) or (2) shall be deemed to constitute a separate reservation for purposes of article 4."

68. It was said that that revised proposal was best placed in article 3, as a separate provision to follow paragraph (2).

69. Various amendments were made to that revised proposal, such that it would read as follows: "Parties may make multiple declarations in a single instrument. When this occurs, each such declaration in respect of a specific investment treaty under article 3(1)(a) or specific set of arbitration rules or procedures under article 3(1)(b), or any such declaration in respect of article 3(1)(c) or article 3(2), shall constitute a separate reservation capable of separate withdrawal under article 4(5)."

70. A suggestion was made to omit the language "When this occurs" from that proposal. Another suggestion was made to replace the word "declaration" in that proposal where it appeared as a noun, with the word "reservation". A further suggestion was made to change the reference in the first line of that proposal to "reservations", and retain the word "declaration" where it appeared in the second sentence, to reflect that a reservation was the result of the making of a declaration under article 3. That suggestion would require the retention of the words "When this occurs" to create the link between the reservation in the first sentence, and the mechanism by which that reservation was effected (e.g., a declaration) in the second sentence.

71. Following those suggestions, a further revised proposal was made as follows: "Parties may make multiple reservations in a single instrument. In such an instrument, each declaration made: (a) In respect of a specific investment treaty under paragraph (1)(a); (b) In respect of a specific set of arbitration rules or procedures under paragraph (1)(b); (c) Under paragraph (1)(c); or (d) Under paragraph (2); shall constitute a separate reservation capable of separate withdrawal under article 4(6)."

72. A question was raised as to whether the language "capable of separate withdrawal under article 4(6)" was necessary. It was said in response that that language, while not strictly required, would be helpful to provide clarity.

73. After discussion, it was agreed: (a) to adopt the text as set out in paragraph 71 above; (b) to place that text as a new paragraph in article 3, to follow paragraph (2); (c) to revise article 4(6) as contained in paragraph 64 above, to eliminate duplicative language in that article; and (d) to remove all references to "modification of a reservation" in articles 4 and 5.

Drafting matters

74. It was agreed that throughout article 4, references to "receipt of notification", would be replaced by references to deposit with the depositary, to align better the drafting of that article with United Nations treaty practice.

Approval of article 4

75. After discussion, the Commission approved the substance of article 4 as contained in paragraph 5 of document A/CN.9/812, and as modified by paragraphs 55, 56, 57, 73 and 74 above.

Draft article 5: Application to investor-State arbitrations

76. The Commission considered article 5 of the draft convention on transparency as set out in paragraph 5 of document A/CN.9/812. The Commission noted that the language set out therein had been approved in substance at the sixtieth session of the Working Group (see A/CN.9/799, para. 76).

77. A proposal was made to add the word "concerned" after the phrase "in respect of each Party" in order to align the wording more closely with other provisions in the draft convention (such as article 4(3)). That proposal was agreed.

78. As matters of drafting, proposals to insert the word "shall" before the words "apply", and to replace the words "have been" appearing before the word "commenced" with "are", were agreed.

79. Consequent to the proposals agreed as set out in paragraphs 77 and 78 above, article 5 would read as follows: "This Convention and any reservation or withdrawal of a reservation, shall apply only to investor-State arbitrations that are commenced after the date when the Convention, reservation, or withdrawal of a reservation, enters into force or takes effect in respect of each Party concerned."

Approval of article 5

80. After discussion, the Commission approved the substance of article 5 as set out in paragraph 79 above.

Draft article 6: Depositary

81. The Commission noted that the Working Group had considered article 6 at its fifty-ninth and sixtieth sessions (see A/CN.9/794, para. 159, and A/CN.9/799, para. 70).

Approval of article 6

82. The Commission approved the substance of article 6 as set out in paragraph 5 of document A/CN.9/812.

Draft article 7: Signature, ratification, acceptance, approval, accession

83. The Commission considered article 7 of the draft convention on transparency as set out in paragraph 5 of document A/CN.9/812. The Commission noted that the language set out therein had been approved in substance at the sixtieth session of the Working Group (see A/CN.9/799, para. 71; for deliberations on article 7 at the fifty-ninth session of the Working Group, see A/CN.9/794, paras. 160-164).

84. In connection with draft article 7, the attention of the Commission was drawn to an invitation from the Government of Mauritius to participate in an event for the celebration of the adoption of the convention. If approved by the General Assembly, the Mauritius event would include a ceremony for the signing of the convention, once adopted. The event was also envisioned to include a seminar under the auspices of UNCITRAL. The Commission was informed that the Government of Mauritius was prepared to assume the additional costs that might be incurred by convening a signing ceremony outside the premises of the United Nations so that the organization of the proposed event and the signing ceremony would not require additional resources under the United Nations budget.

85. The Commission expressed its gratitude for the generosity of the Government of Mauritius in offering to act as host for such an event, and that proposal was unanimously supported.

Paragraph (1)

86. It was observed that, given the strong positive response of the Commission to the invitation to attend a signing ceremony in Mauritius, the text of draft article 7 ought to be adjusted to include Mauritius as the place at which the transparency

convention would be opened for signature and the instrument could then be opened for further signature at United Nations Headquarters in New York.

87. There was broad support for that suggestion and the Commission agreed that paragraph (1) of article 7 would read: "This Convention is open for signature in Port Louis, Mauritius, on 17 March 2015, and thereafter at the United Nations Headquarters in New York by any (a) State; or (b) regional economic integration organization that is constituted by States and is a contracting party to an investment treaty."

Approval of article 7

88. After discussion, the Commission approved the substance of article 7 as contained in paragraph 5 of document A/CN.9/812, and as modified in paragraph 87 above.

Draft article 8: Participation by regional economic integration organizations

89. The Commission considered article 8 of the draft convention on transparency as set out in paragraph 5 of document A/CN.9/812 and took note of the previous deliberations of the Working Group on that article (see A/CN.9/794, paras. 168-170, and A/CN.9/799, paras. 74 and 129-133).

Paragraph (1)

90. A proposal was made to delete the phrase ", and date that investment treaty was concluded", to provide for consistency with the proposed deletion of the reference to the date of conclusion of investment treaties in article 3 (see paras. 48-49 above). In response, it was said that in paragraph (1) of article 8, the reference to a date of conclusion of an investment treaty was intended to alert the depositary to the fact that the treaty in question fell within the scope of application of the convention, and in particular that such treaty was concluded prior to 1 April 2014.

91. It was observed that article 7(1) already provided for the relevant requirements for a regional economic organization to become a Party to the convention. After discussion, it was agreed to delete the phrase ", and date that investment treaty was concluded" from article 8(1).

92. In all other respects, paragraph (1) as set out in paragraph 5 of document A/CN.9/812 was approved in substance.

Approval of article 8

93. After discussion, the Commission approved the substance of article 8 as set out in paragraph 5 of document A/CN.9/812, and as modified by paragraph 91 above.

Draft article 9: Entry into force

94. The Commission considered article 9 of the draft convention on transparency as set out in paragraph 5 of document A/CN.9/812. The Commission noted that the language therein had been approved in substance at the sixtieth session of the

Working Group (see A/CN.9/799, para. 75; for deliberations on article 9 at the fifty-ninth session of the Working Group, see A/CN.9/794, paras. 171-175).

Paragraph (1)

95. A proposal to replace the phrase "enters into force" with the phrase "shall enter into force" was agreed.

Approval of article 9

96. After discussion, the Commission approved the substance of article 9 as set out in paragraph 5 of document A/CN.9/812, and as modified by paragraph 95 above.

Draft article 10: Amendment

97. The Commission considered article 10 of the draft convention on transparency as set out in paragraph 5 of document A/CN.9/812. The Commission noted that the language therein had been approved in substance at the sixtieth session of the Working Group, based on proposals made at that session (see A/CN.9/799, paras. 78 and 138-146; for deliberations on article 10 at the fifty-ninth session of the Working Group, see A/CN.9/794, paras. 177-178).

Paragraph (2)

98. A proposal was made to replace the first sentence of paragraph (2) as follows, "The Parties shall make every effort to achieve consensus at the conference on each amendment". That proposal did not receive support.

99. A proposal to replace the phrases "have been exhausted" and "has been reached" with the phrases "are exhausted" and "is reached", respectively, was accepted.

Paragraph (4)

100. A suggestion was made to replace the words "expressed consent to be bound" with examples of how that consent might be expressed, for example through the deposit of an instrument of ratification, acceptance or approval. It was said in response that means of consent were addressed by the Vienna Convention, and consequently did not need to be explicitly addressed in the transparency convention.

Approval of article 10

101. After discussion, the Commission approved the substance of article 10 as contained in paragraph 5 of document A/CN.9/812, and as modified by paragraph 99 above.

Draft article 11: Denunciation of this Convention

102. The Commission considered article 11 of the draft convention on transparency as set out in paragraph 5 of document A/CN.9/812. The Commission noted that the language set out therein had been approved in substance at the sixtieth session of the Working Group (see A/CN.9/799, paras. 79-80; for deliberations on article 11 at the fifty-ninth session of the Working Group, see A/CN.9/794, para. 179).

Paragraph (1)

103. A suggestion was made to replace the term "notification in writing" with the term "formal notification" in line with other provisions in the draft convention. That proposal was agreed, it having been clarified that it was the understanding of the Commission that formal notifications did take place in writing and that it was consequently not necessary to include the words "in writing" in the convention itself.

Approval of article 11

104. After discussion, the Commission approved the substance of article 11 as set out in paragraph 5 document A/CN.9/812, and as modified by paragraph 103 above.

Title of the transparency convention

105. The Commission agreed that the title of the transparency convention should be the "United Nations Convention on Transparency in Treaty-based Investor-State Arbitration". Further to the offer of the Government of Mauritius to host a signing ceremony for the transparency convention (see paras. 84-87 above), the Commission further agreed that the convention should also be known as the "Mauritius Convention on Transparency" in English and "La Convention de l'Ile Maurice sur la Transparence" in French.

3. Decision of the Commission and recommendation to the General Assembly

106. At its 988th meeting, on 9 July 2014, the Commission adopted by consensus the following decision and recommendation to the General Assembly:

"*The United Nations Commission on International Trade Law*,

"*Recalling* General Assembly resolution 68/109 of 16 December 2013 recommending the use of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration[8] and Arbitration Rules (as revised in 2010, with new article 1, paragraph 4, as adopted in 2013),[9] and further recommending that subject to any provision in relevant treaties that may require a higher degree of transparency than that provided in the Rules on Transparency, the Rules be applied through appropriate mechanisms to investor-State arbitration initiated pursuant to treaties providing for the protection of investors or investments concluded before the date of coming into effect of the Rules, to the extent that such application is consistent with those treaties,

"*Further recalling* that, at its forty-sixth session in 2013, it entrusted Working Group II (Arbitration and Conciliation) with the preparation of a convention to give those States that wished to make the Rules on Transparency in Treaty-based Investor-State Arbitration applicable to their existing treaties an

[8] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), chap. III and annex I.

[9] Ibid., chap. III and annex II.

efficient mechanism to do so, without creating any expectation that other States would use the mechanism offered by the convention,[10]

"*Noting* that the Working Group devoted two sessions, in 2013 and 2014, to the preparation of the draft convention on transparency in treaty-based investor-State arbitration,[11]

"*Further noting* that the preparation of the draft convention was the subject of due deliberation in the Commission and that the draft convention benefited from consultations with Governments and interested intergovernmental and international non-governmental organizations,

"*Having considered* the draft convention at its forty-seventh session, in 2014,

"*Drawing attention* to the fact that the text of the draft convention was circulated for comment before the forty-seventh session of the Commission to all Governments invited to attend sessions of the Commission and the Working Group as members and observers and that the comments received were before the Commission at its forty-seventh session,[12]

"*Considering* that the draft convention has received sufficient consideration and has reached the level of maturity for it to be generally acceptable to States,

"1. *Submits* to the General Assembly the draft convention on transparency in treaty-based investor-State arbitration, as it appears in annex I to the present report;

"2. *Recommends* that the General Assembly, taking into account the extensive consideration given to the draft convention by the Commission and its Working Group II (Arbitration and Conciliation), consider the draft convention with a view to: (a) adopting, at its sixty-ninth session, on the basis of the draft convention approved by the Commission, a United Nations Convention on Transparency in Treaty-Based Investor-State Arbitration; (b) authorizing a signing ceremony to be held on 17 March 2015 in Port Louis, Mauritius, upon which the Convention would be open for signature; and (c) recommending that the Convention be known as the "Mauritius Convention on Transparency" in English and "La Convention de l'Ile Maurice sur la Transparence" in French;

"3. *Requests* the Secretary-General to publish the Convention, upon adoption, including electronically and in the six official languages of the United Nations, and to disseminate it broadly to Governments and other interested bodies."

B. Establishment and functioning of the transparency repository

107. For their implementation, the Rules on Transparency require the establishment of a repository to publish information under the Rules (article 8). The Commission recalled that, at its forty-sixth session, in 2013, it expressed its strong and

[10] Ibid., para. 127.

[11] For the reports of those sessions of the Working Group, see A/CN.9/794 and A/CN.9/799.

[12] A/CN.9/813 and its addendum.

unanimous opinion that the UNCITRAL secretariat should fulfil the role of the transparency repository.[13] It was said that the United Nations, as a neutral and universal body, and its secretariat, as an independent organ under the Charter of the United Nations, should be expected to undertake the core functions of a repository under the Rules on Transparency, as a public administration directly responsible for the servicing and proper operation of its own legal standards.[14] The Commission requested the Secretariat to report to the Commission at its next session on the status of the establishment and functioning of the transparency repository.[15] The General Assembly, in paragraph 3 of its resolution 68/106, invited the Secretary-General to consider performing, in accordance with article 8 of the Rules on Transparency, the role of the transparency repository through the secretariat of the Commission, and requested the Secretary-General to report to the General Assembly and the Commission in this regard.

108. Accordingly, the Secretariat reported on steps taken for meeting the demands of the Commission in respect of the repository function to be performed by the UNCITRAL secretariat. In the context of an upgrade of the UNCITRAL website to facilitate the functioning of the CLOUT database (see para. 175 below), a dedicated web page has been set up by the Secretariat and is accessible at: www.uncitral.org/transparency-registry. Consistent with the aim to enhance transparency in treaty-based investor-State arbitration, the Transparency Registry would publish information and documents where the Rules on Transparency (whether or not amended by the Parties to the treaty) applied pursuant to article 1 of the Rules; or where the Transparency Registry was appointed for the publication of information and documents in treaty-based investor-State arbitration, either by Parties to an investment treaty or by the parties to a dispute. Noting that no information or documents had yet been posted, the Commission welcomed an indication that the Government of Canada had proposed to publish on the Registry web page information in respect of Canadian cases rendered under the North American Free Trade Agreement (NAFTA). It was stated that such publication would play an educational role and illustrate the role to be played by the registry as a global reference on transparency in investor-State treaty-based arbitration.

109. The Commission expressed its appreciation for the establishment of the transparency registry website and for the work of the Secretariat in relation thereto. The Commission was informed that, consistent with the mandate received from the Commission at its forty-sixth session,[16] the Secretariat had sought from the General Assembly the funding necessary to enable the UNCITRAL secretariat to undertake the role of transparency repository. In line with the request by some States that the additional mandate bestowed on the UNCITRAL secretariat be fulfilled on a cost-neutral budgetary basis in relation to the United Nations regular budget, efforts were made to establish the Registry as a pilot project temporarily funded by voluntary contributions. The Commission expressed its appreciation to the European Union for its commitment to provide funding that would allow the Secretariat to recruit the necessary project staff. The Commission encouraged the Secretariat to

[13] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 80.

[14] Ibid., para. 79.

[15] Ibid., para. 98.

[16] Ibid., para. 82.

pursue its efforts to raise the necessary funding through extrabudgetary resources. In response, it was pointed out that, while extrabudgetary funding of the Registry could be envisaged for an initial trial period, its long-term operation would depend on the availability of additional regular budget resources. Should such additional resources remain unavailable at the end of the trial period, alternative solutions would have to be envisaged, such as redeploying resources within the Secretariat, or entrusting entities outside the United Nations with the performance of the repository function, as envisaged by the Commission at its forty-sixth session as a possible temporary solution.[17]

110. After discussion, the Commission recalled its own mandate to "further the progressive harmonization and unification of the law of international trade by: [...] promoting wider participation in existing international conventions and wider acceptance of existing model and uniform laws; [...] preparing or promoting the adoption of new international conventions, model laws and uniform laws and promoting the codification and wider acceptance of international trade terms, provisions, customs and practices, in collaboration, where appropriate, with the organizations operating in this field; [...] promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade; [...] and taking any other action it may deem useful to fulfil its functions".[18] On that basis, it reiterated its mandate to its secretariat to establish and operate the Transparency Registry, initially as a pilot project, and, to that end, to seek any necessary funding.

C. Preparation of a guide on the New York Convention

111. At its forty-first session, in 2008, the Commission agreed that work should be undertaken to eliminate or limit the effect of legal disharmony regarding the implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958,[19] (the New York Convention) by States, its interpretation and its application. The Commission was generally of the view at that session that the outcome of the work should consist in the development of a guide on the New York Convention, with a view to promoting a uniform interpretation and application of the Convention. It was considered that such a guide could assist with problems of legal uncertainty resulting from the imperfect or partial implementation of the Convention and could limit the risk that practices of States diverged from the spirit of the Convention. At that session, the Commission requested the Secretariat to study the feasibility of preparing such a guide. Also at that session, the Commission agreed that, resources permitting, the activities of the Secretariat in the context of its technical assistance programme could include dissemination of information on the judicial interpretation of the New York Convention, which would usefully complement other activities in support of the Convention.[20]

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[17] Ibid., paras. 97-98.

[18] General Assembly resolution 2205 (XXI) of 17 December 1966.

[19] United Nations, *Treaty Series*, vol. 330, No. 4739.

[20] *Official Records of the General Assembly, Sixty-third Session, Supplement No. 17* and corrigendum (A/63/17 and Corr.1), paras. 355 and 360.

112. The Commission recalled that it had been informed, at its forty-fourth and forty-fifth sessions, in 2011 and 2012, that the Secretariat was carrying out a project on the preparation of a guide on the New York Convention, in close cooperation with two experts, E. Gaillard (Sciences Po Paris, École de Droit) and G. Bermann (Columbia University School of Law), who had established research teams to work on that project. The Commission had been informed that Mr. Gaillard and Mr. Bermann, in conjunction with their respective research teams and with the support of the Secretariat, had established a website (www.newyorkconvention1958.org) to make the information gathered in preparation of the guide on the New York Convention publicly available. The website was aimed at promoting the uniform and effective application of the Convention by making available details on its judicial interpretation by States parties. The Commission had also been informed that the UNCITRAL secretariat planned to maintain close connection between the cases in the system for collecting and disseminating case law relating to UNCITRAL texts (CLOUT) (see paras. 170-176 below) and the cases available on the website dedicated to the preparation of the guide on the New York Convention.[21] At its forty-fifth session, in 2012, the Commission expressed its appreciation for the establishment of the website on the New York Convention and the work done by the Secretariat, as well as by the experts and their research teams, and requested the Secretariat to pursue efforts regarding the preparation of the guide on the New York Convention.[22]

113. By paragraph 6 of its resolution 66/94, the General Assembly noted with appreciation the decision of the Commission to request the Secretariat to pursue its efforts towards the preparation of a guide on the Convention.[23] By paragraph 5 of its resolution 68/106, the General Assembly noted "with appreciation the projects of the Commission aimed at promoting the uniform and effective application of the Convention [...], including the preparation of a guide on the Convention, in close cooperation with international experts, to be submitted to the Commission at a future session for its consideration."

114. At its forty-sixth session, the Commission had before it an excerpt of the guide on the New York Convention for its consideration (A/CN.9/786). Concerns were expressed at that session that a guide would indicate preference for some views over others, and would therefore not reflect an international consensus on the interpretation of the New York Convention. The question of the form in which the guide might be published was therefore raised. In response, it was pointed out that the drafting approach adopted in the preparation of the guide was similar to that of other UNCITRAL guides or digests.[24] The Commission requested the Secretariat to

[21] Ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 252; and ibid., *Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 135.

[22] Ibid., *Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 136.

[23] See also General Assembly resolution 67/89, paragraph 5, by which the General Assembly noted "with appreciation the projects of the Commission aimed at promoting the uniform and effective application of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958, including the preparation of a guide on the Convention."

[24] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), paras. 138-140.

submit the guide to the Commission at its forty-seventh session for further consideration of the status of the guide and how it would be published.[25]

115. Pursuant to that request, the Commission at its current session had additional excerpts of the Guide (A/CN.9/814 and its addenda), and considered: (a) the inclusion of a disclaimer in the Guide to address the concerns expressed at the forty-sixth session (see para. 114 above); and (b) the title of the Guide.

116. After discussion, the Commission agreed to include a disclaimer in the Guide as follows: "The Guide is a product of the work of the Secretariat based on expert input, and was not substantively discussed by the United Nations Commission on International Trade Law (UNCITRAL). Accordingly, the Guide does not purport to reflect the views or opinions of UNCITRAL member States and does not constitute an official interpretation of the New York Convention."

117. The Commission further agreed that the guide should be entitled "UNCITRAL Secretariat Guide on the New York Convention" and requested the Secretariat to publish the guide, including electronically, in the six official languages of the United Nations.

D. International commercial arbitration moot competitions

1. Willem C. Vis International Commercial Arbitration Moot

118. It was noted that the Association for the Organization and Promotion of the Willem C. Vis International Commercial Arbitration Moot had organized the Twenty-first Moot, the oral arguments phase of which had taken place in Vienna from 11 to 17 April 2014. As in previous years, the Moot had been co-sponsored by the Commission. Legal issues addressed by the teams of students participating in the Twenty-first Moot were based on the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980)[26] (the United Nations Sales Convention). A total of 291 teams from law schools in 64 countries participated, with the best team in oral arguments being from the Deakin University, Australia. The oral arguments phase of the Twenty-second Willem C. Vis International Commercial Arbitration Moot will be held in Vienna from 27 March to 2 April 2015.

119. It was also noted that the Eleventh Willem C. Vis (East) International Commercial Arbitration Moot had been organized by the Chartered Institute of Arbitrators, East Asia Branch, and co-sponsored by the Commission. The final phase had been organized in Hong Kong, China, from 31 March to 6 April 2014. A total of 99 teams from 28 jurisdictions had taken part in the Eleventh (East) Moot. The winning team in the oral arguments was from the Loyola University Chicago School of Law, United States. The Twelfth (East) Moot would be held in Hong Kong, China, from 15 to 22 March 2015.

[25] Ibid., para. 140.

[26] United Nations, *Treaty Series*, vol. 1489, No. 25567.

2. Madrid Commercial Arbitration Moot 2014

120. It was noted that Carlos III University of Madrid had organized the Sixth International Commercial Arbitration Competition in Madrid from 21 to 25 April 2014. The Madrid Moot had also been co-sponsored by the Commission. The legal issues involved in the competition related to an international distribution contract and sale of goods in which the United Nations Sales Convention was applicable, as well as the UNCITRAL Model Law on International Commercial Arbitration,[27] the New York Convention and the Rules of Arbitration of the Court of Arbitration of Madrid.[28] A total of 21 teams from law schools or masters' programmes in eight countries had participated in the Madrid Moot in Spanish. The best team in oral arguments was Pontificia Universidad Católica del Perú. The Seventh Madrid Moot would be held from 20-24 April 2015.

E. Planned and possible future work

121. In addition to the revision of the UNCITRAL Notes on Organizing Arbitral Proceedings (1996)[29] (the "Notes"), which the Commission had mandated its Working Group II (Arbitration and Conciliation) to undertake (see para. 122 below), the Commission considered two other areas of possible future work for the Working Group (see paras. 123-130 below).

122. The Commission recalled that, at its forty-sixth session, in 2013, it considered that the Notes required updating as a matter of priority. It was agreed that the preferred forum for that work would be that of a Working Group, to ensure that the universal acceptability of the Notes would be preserved.[30]

123. At the current session, the Commission had before it a proposal for future work in relation to enforcement of international settlement agreements (A/CN.9/822). In support of that proposal, it was said that one obstacle to greater use of conciliation was that settlement agreements reached through conciliation might be more difficult to enforce than arbitral awards. In general, it was said that settlement agreements reached through conciliation are already enforceable as contracts between the parties[31] but that enforcement under contract law cross-border can be burdensome and time-consuming. Finally, it was said that the lack of easy enforceability of such contracts was a disincentive to commercial parties to mediate. Consequently, it was proposed that Working Group II develop a multilateral convention on the enforceability of international commercial settlement agreements

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[27] For the text of the UNCITRAL Model Law on International Commercial Arbitration (1985), see *Official Records of the General Assembly, Fortieth Session, Supplement No. 17* (A/40/17), annex I. For the text of the UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006, see *Official Records of the General Assembly, Sixty-first Session, Supplement No. 17* (A/61/17), annex I (revised articles only), and United Nations publication, Sales No. E.08.V.4.

[28] Available from www.camaramadrid.es/doc/linkext/rules-of-arbitration.pdf.

[29] *UNCITRAL Yearbook*, vol. XXVII: 1996, part three, annex II.

[30] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 130.

[31] Guide to Enactment and Use of the UNCITRAL Model Law on International Commercial Conciliation (2002), para. 89. *UNCITRAL Yearbook*, vol. XXXIII: 2002, part three, annex II.

reached through conciliation, with the goal of encouraging conciliation in the same way that the New York Convention had facilitated the growth of arbitration.

124. Support was expressed for possible work in that area on many of the bases expressed above. Doubts were also expressed as to the feasibility of the project and questions were raised in relation to that possible topic of work, including: (a) whether the new regime of enforcement envisaged would be optional in nature; (b) whether the New York Convention was the appropriate model for work in relation to mediated settlement agreements; (c) whether formalizing enforcement of settlement agreements would in fact diminish the value of mediation as resulting in contractual agreements; (d) whether complex contracts arising out of mediation were suitable for enforcement under such a proposed treaty; (e) whether other means of converting mediated settlement agreements into binding awards obviated the need for such a treaty; and (f) what the legal implications for a regime akin to the New York Convention in the field of mediation might be.

125. It was furthermore observed that UNICTRAL had previously considered that issue when preparing the UNCITRAL Model Law on International Commercial Conciliation (2002),[32] and particular reference was made to article 14 of the Model Law and paragraphs 90 and 91 of the Guide to Enactment and Use of that text.[33]

126. The Commission considered whether to mandate its Working Group II to undertake work in the field of concurrent proceedings in investment treaty arbitrations, recalling that it had identified, at its forty-sixth session, in 2013, that the subject of concurrent proceedings was increasingly important particularly in the field of investment arbitration and might warrant further consideration.[34] The Commission was informed that the International Arbitration Institute (IAI, Paris), the Geneva Centre for International Dispute Settlement (CIDS) and the Secretariat jointly organized a conference on that topic on 22 November 2013. It was furthermore mentioned that other organizations, including the OECD, had carried out research in relation to certain aspects of that topic.

127. It was said that parallel proceedings were posing serious issues in the field of treaty-based investor-State arbitration, and that future work in that area could be beneficial. In response, it was suggested that UNCITRAL ought not to limit its work to parallel proceedings arising in the context of investor-State arbitration, but rather, in light of the implication such work might have on other types of arbitration practice, to extend that work to commercial arbitration as well. It was also said, however, that parallel proceedings in investment arbitrations, and those in commercial arbitrations, raised different issues and might need to be considered separately.

128. After discussion, the Commission agreed that the Working Group should consider at its sixty-first and, if necessary, sixty-second sessions, the revision of the Notes. In so doing the Working Group should focus on matters of substance, leaving drafting to the Secretariat.

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[32] *UNCITRAL Yearbook*, vol. XXXIII: 2002, part three, annex I.

[33] Ibid., annex II.

[34] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), paras. 131 and 132.

129. The Commission further agreed that the Working Group should also consider at its sixty-second session the issue of enforcement of international settlement agreements resulting from conciliation proceedings and should report to the Commission at its forty-eighth session, in 2015, on the feasibility and possible form of work in that area. The Commission invited delegations to provide information to the Secretariat in respect of that subject matter.

130. In relation to the issue of concurrent proceedings, the Commission agreed that the Secretariat should explore the matter further, in close cooperation with experts from other organizations working actively in that area. That work should focus on treaty-based investor-State arbitration, without disregarding the issue in the context of international commercial arbitration. The Commission requested the Secretariat to report to the Commission at a future session, outlining the issues at stake and identifying work that UNCITRAL might usefully undertake in the area.

IV. Micro-, small- and medium-sized enterprises: progress report of Working Group I

131. The Commission recalled its decision at its forty-sixth session, in 2013, to entrust Working Group I with work aimed at reducing the legal obstacles encountered by micro-, small- and medium-sized enterprises (MSMEs) throughout their life cycle, in particular, in developing economies.[35] It was also recalled that at that session, the Commission agreed that such work should commence with a focus on the legal questions surrounding the simplification of incorporation.[36] The Working Group commenced its work on that topic at its twenty-second session (New York, 10-14 February 2014) and the Commission had before it the report of the Working Group on its work at that session (A/CN.9/800). The Commission commended the Secretariat for the working papers and the report prepared for that session.

132. The Commission noted that the Working Group, at its twenty-second session, had engaged in preliminary discussions in respect of a number of broad issues relating to the development of a legal text on simplified incorporation. That discussion was based upon the issues raised in working paper A/CN.9/WG.I/WP.82, including: limited liability, legal personality, the protection of third parties and creditors dealing with the enterprise, registration of the business, sole ownership, minimum capital requirements, transparency in respect of beneficial ownership, internal governance issues, and freedom of contract, as well as the possible forms that the proposed legal text could take. The Commission also noted that the Working Group had requested the Secretariat to prepare a document setting out best practices in respect of business registration, as well as a template on simplified incorporation and registration containing contextual elements and experiences linked to the mandate of the Working Group, to provide the basis for drafting a possible model law, without discarding the possibility of the Working Group drafting different legal

[35] Ibid., paras. 321-322.
[36] Ibid., para. 321.

instruments, particularly, but not exclusively, as they applied to MSMEs in developing countries.[37]

133. It was observed that the fullest participation of States, particularly developing countries, in the Working Group was desirable in order to offer the widest possible range of experiences in the development of the legal standard. Access to credit was flagged as one important future issue for the Working Group, as well as alternative dispute resolution. It was said that some form of cooperation with other Working Groups would be needed.

134. After discussion, the Commission reaffirmed the mandate of the Working Group, as expressed in the report of the Commission's forty-sixth session.[38]

V. Online dispute resolution: progress report of Working Group III

135. The Commission recalled its decision at its forty-third session, in 2010, to entrust Working Group III to undertake work in the field of online dispute resolution (ODR) relating to cross-border electronic transactions.[39] At its current session, the Commission had before it reports of the Working Group on its twenty-eighth session (A/CN.9/795), held in Vienna from 18 to 22 November 2013, and twenty-ninth session (A/CN.9/801), held in New York from 24 to 28 March 2014.

136. The Commission welcomed the progress that was made at the twenty-eighth and twenty-ninth sessions of the Working Group, and agreed that the Working Group had made substantial progress on the text of Track II of the procedural rules on cross-border electronic transactions (the "Rules"), the subject of the Working Group's deliberations, including progress on many functional issues. It was further agreed that as there were conceptually many common elements between Track I and Track II of the Rules, many issues relating to Track I of the Rules had been addressed in those discussions as well.

137. The Commission further agreed that the next session of the Working Group should address the text of Track I of the Rules, should also address the issues identified in paragraph 222 of the report of the forty-sixth session of the Commission,[40] some of which were further addressed in document A/CN.9/WG.III/WP.125, a proposal by the Governments of Colombia, Honduras, Kenya and the United States, and should continue to achieve practical solutions to open questions.

138. The Commission recalled that at its forty-fifth session, in 2012, it had decided that the Working Group should: (a) consider and report back at a future session of the Commission on how the draft rules would respond to the needs of developing countries and those facing post-conflict situations, in particular with regard to the need for an arbitration phase to be part of the process; (b) continue to include in its

[37] A/CN.9/800, para. 65.

[38] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), paras. 318 and 321.

[39] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 257.

[40] Ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17).

deliberations the effects of online dispute resolution on consumer protection in developing and developed countries and countries in post-conflict situations, including in cases where the consumer was the respondent party in an online dispute resolution process; and (c) continue to explore a range of means of ensuring that online dispute resolution outcomes were effectively implemented, including arbitration and possible alternatives to arbitration.[41]

139. The Commission further recalled that, at its forty-sixth session, in 2013, it had unanimously confirmed that decision, and reaffirmed the mandate of the Working Group in relation to low-value, high-volume transactions, encouraging the Working Group to continue to conduct its work in the most efficient manner possible.[42]

140. After discussion, the Commission reaffirmed its understanding of the Working Group's mandate, as expressed at the forty-fifth and forty-sixth sessions of the Commission.[43]

VI. Electronic commerce: progress report of Working Group IV

141. The Commission recalled that at its forty-fourth session, in 2011, it had mandated Working Group IV (Electronic Commerce) to undertake work in the field of electronic transferable records. At its current session, the Commission had before it reports of the Working Group on its forty-eighth session (A/CN.9/797), held in Vienna from 9 to 13 December 2013, and forty-ninth session (A/CN.9/804), held in New York from 28 April to 2 May 2014. The Commission took note of the key discussions during the sessions, which were guided by the principles of functional equivalence and technological neutrality.

142. The Commission further noted that the Working Group had dedicated one half-day at each session for discussing technical assistance and coordination activities in the field of electronic commerce, which also provided an opportunity for the Working Group to be informed about recent developments in States. In that context, the Commission was informed about the coordination activities undertaken by the Secretariat, including continued cooperation with the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT), United Nations Economic and Social Commission for Asia and the Pacific (UN/ESCAP), the Asia-Pacific Economic Cooperation (APEC), the European Commission and the World Customs Organization (WCO).

143. It was further noted that the chairperson of the forty-sixth session of the Commission had given a keynote speech at the conference "Facilitating Trade in the Digital Economy — Enhancing Interaction Between Business and Government" organized by ICC (Geneva, 8-9 April 2014), which highlighted the contribution of UNCITRAL texts to facilitating the use of electronic communications at the national and international levels. In that context, support was expressed for the Commission and the Secretariat engaging closely with other organizations active in the field of electronic commerce.

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[41] Ibid., *Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 79.

[42] Ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 222.

[43] Ibid., *Sixty-seventh Session, Supplement No. 17* (A/67/17), paras. 71-79; and ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), paras. 218-222.

144. The Commission was informed that the Russian Federation and Congo had become States parties to the United Nations Convention on the Use of Electronic Communications in International Contracts (New York, 2005)[44] (the Electronic Communications Convention), which now had five States parties. The Commission urged other States to consider becoming parties to that Convention.

145. With respect to possible future work, the Commission recalled that at its forty-sixth session, in 2013, it agreed that whether work regarding electronic transferable records might extend to identity management, use of mobile devices in electronic commerce and single window facilities would be further assessed at future sessions.[45]

146. In that context, the Commission took note of a proposal by the Government of Canada with regard to legal issues on cloud computing (A/CN.9/823). It was explained that the proposal was intended to request the Secretariat to gather information relating to cloud computing and to prepare a document identifying potential risks from current practices in relation to conflict of laws, the lack of supporting legislative framework, and the possible disparities of domestic laws. It was also suggested that best practices could be outlined, also making reference to work done by other organizations. It was stated that such work by the Secretariat could form a basis for the Commission's consideration of cloud computing as a possible future topic for the Working Group.

147. There was wide support for that proposal recognizing the implication of cloud computing, particularly for small- and medium-sized enterprises. However, it was suggested that caution should be taken not to engage in issues such as data protection, privacy and intellectual property, which might not easily lend themselves to harmonization and might raise questions as to whether they fell within the mandate of the Commission. It was also stressed that work already undertaken by other international organizations, for example, OECD and APEC, in this area should be taken into consideration so as to avoid any overlap and duplication of work. It was also suggested that compilation of best practices might be premature at the current stage. Subject to those comments, it was generally agreed that the mandate given to the Secretariat should be broad enough to enable it to gather as much information as possible for the Commission to consider cloud computing as a possible topic at a future session. It was noted that the scope of any future work would, in any case, have to be determined by the Commission at a later stage.

148. Another suggestion related to possible future work by the Working Group was that the Secretariat should continue to closely follow legislative developments in the field of identity management and authentication, particularly in respect of the recent adoption of the Regulation of the European Parliament and of the Council on Electronic Identification and Trust Services for Electronic Transactions in the Internal Market (eIDAS). It was suggested that workshops could be organized to gather information on that topic.

149. Noting that the current work of the Working Group would greatly assist in facilitating electronic commerce in international trade, the Commission expressed

[44] General Assembly resolution 60/21, annex.

[45] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 313.

its appreciation to the Working Group for the progress made in preparing draft provisions on electronic transferable records and commended the Secretariat for its work. After discussion, the Commission reaffirmed the mandate of the Working Group to develop a legislative text on electronic transferable records and requested the Secretariat to continue reporting to the Commission on relevant developments in the field of electronic commerce.

150. The Commission requested the Secretariat to compile information on cloud computing, identity management, use of mobile devices in electronic commerce and single window facilities, including by organizing, co-organizing or participating in colloquia, workshops and other meetings within available resources, and to report at a future session of the Commission.

VII. Insolvency law: progress report of Working Group V

151. The Commission considered the reports of the Working Group on its forty-fourth session (A/CN.9/798), held in Vienna from 16 to 20 December 2013, and forty-fifth session (A/CN.9/803), held in New York from 21 to 25 April 2014, as well as the report of the colloquium (A/CN.9/815) held as part of the forty-fourth session in accordance with the decision of the Commission at its forty-sixth session to clarify how the Working Group would proceed with the enterprise group issues and other parts of its current mandate and to consider topics for possible future work, including insolvency issues specific to MSMEs.[46]

152. Reference was made to paragraphs 16-23 of document A/CN.9/798, in which the Working Group set forth its conclusions with respect to how the work on enterprise group issues and other parts of the current mandate should proceed. The Commission noted that the Working Group had, at its forty-fifth session, commenced consideration of enterprise group insolvency on the basis of the issues outlined in paragraph 16 of document A/CN.9/798. The Commission also noted that an open-ended informal group had been established to consider the feasibility of developing a convention on international insolvency issues and to study the issues facing States with respect to adoption of the UNCITRAL Model Law on Cross-Border Insolvency[47] (see A/CN.9/798, para. 19, and A/CN.9/803, para. 39 (a)).

153. Reference was made to the topic of the obligations of directors of enterprise group companies in the period approaching insolvency, as discussed in paragraph 23 of document A/CN.9/798. It was said that that topic was being considered by an informal expert group prior to Working Group activity.

154. Reference was also made to paragraphs 24-30 of document A/CN.9/798 in which the Working Group outlined its conclusions on topics for possible future work, as well as to paragraphs 12-14 of document A/CN.9/803, which referred to the insolvency of MSMEs as requested by the Commission (see para. 151 above), and to paragraph 39 (b) of that document which sought a mandate for work on the recognition and enforcement of insolvency-derived judgements.

[46] Ibid., para. 325.

[47] General Assembly resolution 52/158, annex.

155. The Commission expressed support for continuing the current work on insolvency of enterprise groups as described in paragraph 152 above with a view to bringing it to a conclusion at an early date. There was support for the suggestion that, in addition to that topic, the Working Group's other priority should be to develop a model law or model legislative provisions to provide for the recognition and enforcement of insolvency-derived judgements, which was said to be an important area for which no explicit guidance was contained in the UNCITRAL Model Law on Cross-Border Insolvency. The Commission approved a mandate accordingly.

156. Development of a text on insolvency of MSMEs was emphasized as being important work which, when initiated, should be coordinated as appropriate with Working Group I so as to promote consistency of UNCITRAL standards in that area. The view was expressed that that work should become Working Group V's next priority, after completion of the work outlined in paragraph 155 above.

157. It was pointed out that Working Group V had a rather full agenda already and needed to prioritise its work, and in that light there were certain matters that did not require consideration as immediate priorities. Those included the insolvency of large and complex financial institutions, and further work on financial contracts, despite the recognized need to assure that the relevant provisions of the UNCITRAL Legislative Guide on Insolvency Law,[48] remained consistent with current best practice and related international instruments. The Commission requested the secretariat to monitor developments at the Financial Stability Board and Unidroit.

158. Support was expressed for continued study on the feasibility of developing a convention on selected international insolvency issues (which, it was said, was grounded in the need for a treaty basis to facilitate cross-border cooperation in insolvency matters) and on exploring the potential for further adoption of the UNCITRAL Model Law on Cross-Border Insolvency. The Working Group was urged to continue its study on those topics. Regarding a convention, it was suggested that the open-ended informal group referred to in paragraph 152 above should include in its deliberations whether such an instrument would have value in encouraging States to adopt cross-border insolvency measures, which should be seen as a primary justification for a convention.

159. A note of caution was expressed regarding the setting up of informal groups, of which it was said that, though they may have certain advantages with regard to efficiency, they could be perceived by their nature as less inclusive.

VIII. Security interests: progress report of Working Group VI

160. The Commission recalled that at its forty-sixth session, in 2013, it had confirmed its decision that Working Group VI (Security Interests) should prepare a simple, short and concise model law on secured transactions based on the recommendation of the UNCITRAL Legislative Guide on Secured Transactions[49] (the Secured Transactions Guide) and consistent with all texts prepared by the

[48] United Nations publication, Sales No. E.05.V.10.

[49] United Nations publication, Sales No. E.09.V.12.

Commission on secured transactions.[50] At its current session, the Commission had before it reports of the Working Group on its twenty-fourth session (A/CN.9/796), held in Vienna from 2 to 6 December 2013, and twenty-fifth session (A/CN.9/802), held in New York from 31 March to 4 April 2014. The Commission noted that at its twenty-fourth session the Working Group had commenced its work on the draft model law and that at its twenty-fifth session the Working Group had completed the first reading of the draft model law. The Commission further took note of the key decisions made during the two sessions.

161. The Commission also recalled that at its forty-sixth session, in 2013, it had agreed that whether the draft model law should include provisions on security interests in non-intermediated securities would be assessed at a future time.[51] To facilitate consideration of the issue by the Commission, the Working Group, at its twenty-fifth session, considered a set of definitions and draft provisions dealing with non-intermediated securities and decided to recommend to the Commission that security rights in non-intermediated securities should be addressed in the draft model law (see A/CN.9/802, para. 93). The Commission had before it a note by the Secretariat entitled "Draft Model Law on Secured Transactions: Security Interests in Non-Intermediated Securities" (A/CN.9/811), which included the definitions and draft provisions to be included in the draft model law as had been agreed by the Working Group.

162. It was stated that, while non-intermediated securities were an important source of credit for businesses, particularly small- and medium-sized enterprises, security interests in non-intermediated securities had not been addressed in the Unidroit Convention on Substantive Rules for Intermediated Securities,[52] the Convention on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary[53] or the Secured Transactions Guide. Therefore, it was widely agreed that there was great benefit in including the definitions and draft provisions on non-intermediated securities in the draft model law.

163. Acknowledging the importance of modern secured transactions law for the availability and cost of credit and the need for urgent guidance to States, in particular those with developing economies and economies in transition, the Commission expressed its satisfaction for the considerable progress achieved by the Working Group in its work. The Commission thus requested the Working Group to expedite its work so as to complete the draft model law, including the definitions and provisions on non-intermediated securities, and to submit it to the Commission for adoption together with a guide to enactment as soon as possible.

IX. Technical assistance to law reform

164. The Commission had before it a note by the Secretariat (A/CN.9/818) describing technical cooperation and assistance activities. The Commission stressed

[50] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), paras. 194 and 332.

[51] Ibid., para. 332.

[52] Available from www.unidroit.org/english/conventions/2009intermediatedsecurities/convention.pdf.

[53] Available from www.hcch.net/index_en.php?act=conventions.text&cid=72.

the importance of such activities and expressed its appreciation for the related work undertaken by the Secretariat.

165. The Commission noted that the continuing ability to respond to requests from States and regional organizations for technical cooperation and assistance activities was dependent upon the availability of funds to meet associated costs. The Commission further noted that, despite efforts by the Secretariat to solicit new donations, funds available in the UNCITRAL Trust Fund for Symposia were very limited. Accordingly, requests for technical cooperation and assistance activities continued to be very carefully considered, and the number of such activities, which of late had mostly been carried out on a cost-share or no-cost basis, was limited. The Commission requested the Secretariat to continue exploring alternative sources of extrabudgetary funding, in particular by more extensively engaging permanent missions, as well as other possible partners in the public and private sectors. The Commission also encouraged the Secretariat to seek cooperation and partnership with international organizations, including through regional offices, and bilateral assistance providers in the provision of technical assistance, and appealed to all States, international organizations and other interested entities to facilitate such cooperation and take any other initiative to maximize the use of relevant UNCITRAL standards in law reform.

166. The Commission welcomed the Secretariat's efforts to expand cooperation with the Government of the Republic of Korea on the APEC Ease of Doing Business project in the area of enforcing contracts, to other areas and with other APEC member economies. Support was expressed for the Secretariat's aim to cooperate more closely with APEC and its member economies to improve the business environment in the Asia-Pacific region and to promote UNCITRAL texts.

167. The Commission reiterated its appeal to all States, international organizations and other interested entities to consider making contributions to the UNCITRAL Trust Fund for Symposia, if possible in the form of multi-year contributions or as specific-purpose contributions, in order to facilitate planning and enable the Secretariat to meet the increasing number of requests from developing countries and countries with economies in transition for technical cooperation and assistance activities. The Commission expressed its appreciation to the Government of the Republic of Korea, through its Ministry of Justice, and to the Government of Indonesia for their contributions to the Trust Fund since the Commission's forty-sixth session and to organizations that had contributed to the programme by providing funds or by hosting seminars.

168. The Commission appealed to the relevant bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the trust fund established to provide travel assistance to developing countries that were members of the Commission. The Commission expressed its appreciation to Austria for contributing to the UNCITRAL Trust Fund since the Commission's forty-sixth session, thereby enabling travel assistance to be granted to developing countries that were members of UNCITRAL.

169. Having heard that questions were occasionally raised, particularly in the context of cost-cutting exercises conducted in the Secretariat, as to the existence of a general mandate for the Commission to undertake technical assistance activities, the Commission was unanimous in affirming the existence of that general mandate,

as stemming from numerous resolutions of the General Assembly, since its establishing resolution 2205 (XXI) of 17 December 1966 created the Commission to "further the progressive harmonization and unification of the law of international trade by: [...](b) Promoting wider participation in existing international conventions and wider acceptance of existing model and uniform laws; (c) Preparing or promoting the adoption of new international conventions, model laws and uniform laws and promoting the codification and wider acceptance of international trade terms, provisions, customs and practices, in collaboration, where appropriate, with the organizations operating in this field; (d) Promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade; [...](h) Taking any other action it may deem useful to fulfil its functions". The Commission expressed its unanimous understanding that the sustained ability to fulfil its technical assistance mandate through its secretariat was essential to facilitate the adoption of UNCITRAL texts, in particular in developing countries and in countries that were less familiar with the work of the Commission.

X. Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts

170. The Commission, considering document A/CN.9/810, expressed its continuing belief that CLOUT and the digests were an important tool for promoting uniform interpretation and application of UNCITRAL texts. The Commission noted with appreciation that, in addition to the New York Convention, an increasing number of UNCITRAL texts were represented in CLOUT. They are as follows:

- Convention on the Limitation Period in the International Sale of Goods (New York, 1974)[54] and Convention on the Limitation Period in the International Sale of Goods as amended by the Protocol of 11 April 1980 (Vienna)[55]
- United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978)[56]
- United Nations Sales Convention
- United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (New York, 1995)[57]
- Electronic Communications Convention
- UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006[58]

[54] United Nations, *Treaty Series*, vol. 1511, No. 26119.
[55] Ibid., vol. 1511, No. 26121.
[56] Ibid., vol. 1695, No. 29215.
[57] United Nations, *Treaty Series*, vol. 2169, No. 38030, p. 163.
[58] *Official Records of the General Assembly, Fortieth Session, Supplement No. 17* (A/40/17), annex I; and ibid., *Sixty-first Session, Supplement No. 17* (A/61/17), annex I.

- UNCITRAL Model Law on International Credit Transfers (1992)[59]

- UNCITRAL Model Law on Electronic Commerce, 1996[60]

- UNCITRAL Model Law on Cross-Border Insolvency

171. The Commission further noted with satisfaction that as of 5 May 2014, 143 issues of compiled case-law abstracts had been published, dealing with 1,351 cases from all regions of the world.

172. The Commission was informed that the network of national correspondents had maintained its composition of 64 national correspondents representing 31 States. Noting the important role of national correspondents both in collecting case law and preparing abstracts, the Commission invited those States that had not yet appointed national correspondents to do so.

173. The Commission commended the Secretariat for promoting the *UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods* (2012) (the CISG Digest) and the *UNCITRAL Digest of Case Law on the Model Law on International Commercial Arbitration* (the MAL Digest) through various means. It further noted with satisfaction the translation of the third revision of the CISG Digest, published in English 2012, in all United Nations official languages. The Commission was further informed of progress of preparation of the digest of case law on the UNCITRAL Model Law on Cross-Border Insolvency and work to update the current version of the MAL Digest. The Commission requested the Secretariat to continue preparing and publishing, including through electronic means, digests of case law relating to UNCITRAL texts in as many official languages as possible and to ensure that those digests were broadly disseminated to Governments and other interested bodies.

174. The Commission took note with appreciation of the performance of the website www.newyorkconvention1958.org, which was launched in 2012 to make publicly available information collected in the preparation of the UNCITRAL Secretariat Guide on the New York Convention (see para. 112 above).

175. The Commission also noted with appreciation that work undertaken to upgrade the UNCITRAL website (www.uncitral.org) to facilitate the functioning of the CLOUT database was progressing. In that context, it was suggested to consider the use of social media as a means to promote the use of the CLOUT database and the UNCITRAL website.

176. The Commission, as in the previous sessions, commended the Secretariat for its work on CLOUT, acknowledged the resource-intensive nature of the system and the need for further resources to sustain it. The Commission thus reiterated its appeal to States to assist the Secretariat in the search for available funding sources to ensure proper maintenance and development of CLOUT.[61]

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[59] *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 17* (A/47/17), annex I.

[60] General Assembly resolution 51/162, annex.

[61] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 240.

XI. Status and promotion of UNCITRAL texts

177. The Commission considered the status of the conventions and model laws emanating from its work and the status of the New York Convention, on the basis of a note by the Secretariat (A/CN.9/806). The Commission noted with appreciation the information on treaty actions and legislative enactments received since its forty-sixth session.

178. The Commission also noted the following actions made known to the Secretariat subsequent to the submission of the Secretariat's note:

(a) the New York Convention — accession by Burundi (150 States parties); and

(b) United Nations Sales Convention — accession by Congo (81 States parties).

179. The Commission approved the planned future work by the Secretariat to further promote the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (New York, 2008) (the Rotterdam Rules)[62] through the preparation of an accession kit designed to assist States with the ratification of or accession to the Convention, without any bearing on the interpretation of the Convention. The Commission requested the Secretariat to publish the accession kit, including electronically and in the six official languages of the United Nations, and to disseminate it to Governments and other interested bodies.

180. Considering the broader impact of UNCITRAL's texts, the Commission took note of the bibliography of recent writings related to the work of UNCITRAL (A/CN.9/805) and noted with appreciation the increased influence of UNCITRAL legislative guides, practice guides and contractual texts. To facilitate a comprehensive approach to the creation of the bibliography and to further the understanding of the influence of UNCITRAL texts, the Commission called on non-governmental organizations, in particular those invited to the Commission, to donate copies of their journals, annual reports and other publications to the UNCITRAL Law Library for review. In this regard, the Commission expressed appreciation to the Ljubljana Arbitration Centre for its donation of current and forthcoming issues of the *Slovenian Arbitration Review* and to the Eötvös Loránd University Faculty of Law for its donation of current and forthcoming issues of the *ELTE Law Journal*.

181. The important role played by the UNCITRAL website (www.uncitral.org) in promotion and dissemination of information about UNCITRAL, its texts and its publications was highlighted and the Commission expressed its approval for the sound management of the website by the Secretariat to maintain the high standards. Recalling the General Assembly resolutions commending the website's six-language interface,[63] the Commission requested the Secretariat to continue to provide, via the website, UNCITRAL texts, publications, and related information, in a timely

[62] General Assembly resolution 63/122, annex.

[63] General Assembly resolutions 61/32, para. 17, 62/64, para. 16, and 63/120, para. 20.

manner and in the six official languages of the United Nations. (As related to the functioning of the UNCITRAL website, see also para. 175 above.)

XII. Coordination and cooperation

A. General

182. The Commission, having before it document A/CN.9/809, noted with appreciation that since its forty-sixth session, in 2013, the Secretariat had maintained a sustained involvement in initiatives of other organizations active in the field of international trade both within and outside the United Nations system. Among others, the Secretariat had participated in the activities of the following organizations: the UN/CEFACT, the United Nations Conference on Trade and Development, the United Nations Economic Commission for Europe, the United Nations Environment Programme, the United Nations Inter-Agency Cluster on Trade and Productive Capacity, the Hague Conference, OECD, Unidroit, the World Bank and the World Trade Organization.

183. By way of example of current efforts, the Commission took note with satisfaction of the coordination activities involving the Hague Conference and Unidroit as well as the activities on the rule of law in those areas of work of the United Nations and other entities that were of relevance to the work of UNCITRAL.

184. The Commission noted that the Secretariat participated in expert groups, working groups and plenary meetings of other organizations with the purpose of sharing information and expertise and avoiding duplication of work in the resultant work products. The Commission further observed that coordination work often involved travel to meetings of those organizations and the expenditure of funds allocated for official travel. The Commission reiterated the importance of such work being undertaken by UNCITRAL as the core legal body in the United Nations system in the field of international trade law and supported the use of travel funds for that purpose.

B. Coordination and cooperation in the field of security interests

185. Recalling the mandate it had given to the Secretariat at its forty-fourth session, in 2011,[64] the Commission noted with appreciation the efforts of the Secretariat to coordinate with the World Bank in preparing a revised version of the World Bank Insolvency and Creditor Rights Standard (the "ICR Standard") on the basis of the World Bank Principles for Effective Insolvency & Creditor Rights Systems[65] (the "Principles") revised to incorporate the key recommendations of the Secured Transactions Guide, and to make reference to the UNCITRAL Legislative Guide on Secured Transactions: Supplement on Security Rights in Intellectual Property

[64] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 228.

[65] Available from http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTICE/EXTGILD/0,,contentMDK:22095859~menuPK:64874173~pagePK:4789622~piPK:64873779~theSitePK:5807555,00.html.

(2010)[66] and to the UNCITRAL Guide on the Implementation of a Security Rights Registry (2013).[67]

186. The Commission was informed by the representative of the World Bank that the special Working Group on Security Interests designated by the World Bank's Global Task Force on Effective Insolvency and Debtor/Creditor Regimes (the "Task Force") to examine and update the Principles had completed its work. It was further noted that the report and recommendation of that special Working Group would be reviewed by the Task Force at its meeting in October 2014 and posted for public comment, after which the Task Force would determine the best way of integrating the revised Principles into the ICR Standard. The Secretariat was requested by the World Bank to continue participating in that process.

187. It was widely felt that such coordination effort was important and should continue in an expeditious manner. Thus, the Commission renewed its mandate to the Secretariat to continue to coordinate with the World Bank and to finalize a revised version of the ICR Standard that would be consistent with relevant UNCITRAL texts.

188. Recalling its decision at its forty-sixth session, in 2013, to request the Secretariat to engage in discussions with the European Commission to ensure a coordinated approach to the issue of the law applicable to third-party effects of assignments of receivables,[68] the Commission was informed of the efforts made by the Secretariat in that respect. In that context, the Commission reiterated its call to the European Commission to ensure a coordinated approach in line with all the texts of UNCITRAL on security interests and renewed the mandate it had given to the Secretariat to cooperate with the European Commission to ensure such a coordinated approach.

189. The Commission took note of a statement by the Unidroit representative on the status of the Convention on International Interests in Mobile Equipment (the Cape Town Convention) and its protocols.[69] In that context, the Commission was informed that Unidroit was in the process of considering the preparation of a new protocol to the Cape Town Convention on mining, agricultural and construction equipment (the "MAC Protocol") through a study group that is expected to meet in December 2014. It was widely felt that while the Cape Town Convention and its protocols provided a separate international regime for certain types of mobile equipment, coordination between the MAC Protocol and all the texts of UNCITRAL on security interests was extremely important in order to avoid any overlap or conflict with existing work. It was noted that if the scope of the MAC Protocol were to follow the approach of the Cape Town Convention and be limited to equipment of high value, crossing national borders in the course of its normal use, and typically being subject to asset-based registration, the MAC Protocol would be compatible with the comprehensive approach taken in the Secured Transactions Guide. After discussion, the Commission renewed its mandate given to the Secretariat to cooperate with Unidroit, particularly in the area of security interests.

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[66] Available from www.uncitral.org/uncitral/uncitral_texts/security.html.

[67] Ibid.

[68] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 249.

[69] Available from www.unidroit.org/instruments/security-interests/cape-town-convention.

190. The Commission also welcomed and expressed support for the cooperation and coordination with the International Financial Corporation (IFC) or any other entity resulting from the recent restructuring of the World Bank Group with respect to technical assistance to law reform and with OAS with respect to local capacity-building in the area of security interests.

C. Reports of other international organizations

191. The Commission took note of statements made on behalf of the following international and regional organizations: Unidroit, OAS, IMO, World Bank, IDLO and OHCHR. A summary of their statements is reproduced below.

1. Unidroit

192. The Secretary-General of Unidroit reported on the main activities of Unidroit since the forty-sixth session of UNCITRAL, in 2013. The Commission was in particular informed that:

(a) **Preparation of legal guide on contract farming** in cooperation with interested international organizations, in particular the Food and Agriculture Organization of the United Nations (FAO), the International Fund for Agricultural Development (IFAD) and the World Food Programme (WFP), continued. With the assistance of the Unidroit secretariat, the experts were currently revising the guide, with a view to complete review of the draft guide at the fourth and final meeting of the Unidroit working group to be held in mid-November 2014. Before that meeting, the Unidroit secretariat would circulate the draft to international organizations, farmers, industry representatives and scholars, and the comments received would be before the working group. The final deliberations of the working group would also be informed by discussions at four consultation events organized in the course of 2014 with the view of presenting the content of the draft guide to audiences of farmers' representatives, industry stakeholders, interested Governments and intergovernmental and non-governmental organizations, and seeking feedback on its adequacy to meet their practical needs. After that final meeting of the working group, the guide would undergo pre-publication editing and translation into French as well as the required FAO procedures, before being submitted to the Unidroit Governing Council for approval, at its ninety-fourth session, in 2015. Once finalised, the guide was expected to be issued as a joint FAO/Unidroit instrument, which the partner organizations would use in the framework of their technical assistance and capacity-building programmes in developing countries;

(b) In 2014, the Unidroit Governing Council decided to take a first initial step towards a **fourth edition of the Unidroit Principles of International Commercial Contracts**.[70] It instructed the Unidroit secretariat to set up a restricted Steering Committee for the purpose of formulating specific proposals for appropriate amendments and additions to the rules and comments of the Unidroit Principles to address particular issues raised by **long-term contracts**. The Steering Committee was expected to meet in January 2015. The first reading of the draft by the Unidroit Council was expected at its ninety-fourth session in 2015;

[70] The current and earlier editions of the Principles are available from www.unidroit.org/publications/513-unidroit-principles-of-international-commercial-contracts.

(c) The **Cape Town Convention** currently had 60 States Parties; the Aircraft Protocol to the Cape Town Convention continued to attract new accessions; the International Registry for aircraft objects was expanding exponentially, in terms of the proportion of the world's commercial aircraft financing transactions recorded in the registry; the Rail Protocol had six signatories and one State Party and the negotiations with the bidder selected to operate the International Registry for railway rolling stock had been successfully completed. As regards the Space Protocol, the Preparatory Commission, established pursuant to Resolution 1 of the Diplomatic Conference, met in Rome on 6 and 7 May 2013, and again on 27 and 28 February 2014, and would hold its third session in September 2014 to consider a first draft of the Registry Regulations and the process for selecting the registrar. The International Telecommunication Union (ITU) accepted to join the Preparatory Commission, and its secretariat confirmed its interest in becoming the Supervisory Authority. The Unidroit Governing Council agreed to set up a study group to consider the feasibility of future work on a possible fourth protocol to the Cape Town Convention (the MAC Protocol) (see also para. 189 above). The first meeting of the study group would take place in Rome, on 15-17 December 2014;

(d) In 2013 Unidroit and the European Law Institute (ELI) agreed to conduct a joint project aimed at developing **model rules of civil procedure tailored for the European context** and taking into account, in particular, the European *acquis*. The first joint ELI/Unidroit workshop, in cooperation with the American Law Institute (ALI), was held in Vienna on 18 and 19 October 2013. In 2014, Unidroit and ELI set up a Steering Committee, which met on 12-13 May 2014 in Rome and agreed on the composition of the working groups for each topic chosen at the 2013 workshop (service and information; interim measures; evidence). Those working groups would hold a joint meeting, with the participation of a representative of ALI, in November 2014 in Rome. A final report on the feasibility of formulating European model rules of civil procedure on the basis of the ALI/Unidroit Principles of Transnational Civil Procedure[71] (the ALI/Unidroit Principles) and a list of topics to be covered by future rules were expected to be completed by 2015. The project might represent a first attempt towards the development of other regional projects adapting the ALI/Unidroit Principles to the specificities of regional legal cultures, leading the way to the drafting of other regional rules.

2. OAS

193. A representative of OAS referred to the long-standing history of the relationship between the OAS and UNCITRAL and informed about current areas of work in private international law undertaken in OAS by its political organs (the General Assembly, the Permanent Council and the Committee on Juridical and

[71] Prepared by a joint ALI/Unidroit Study Group and adopted in 2004 by the Unidroit Governing Council, aimed at reconciling the differences among various national rules of civil procedure, taking into account the peculiarities of transnational disputes as compared to purely domestic ones. They were accompanied by a set of "Rules of Transnational Civil Procedure", which were not formally adopted by either Unidroit or ALI, but constituted "the Reporters' model implementation of the Principles, providing greater detail and illustrating concrete fulfilment of the Principles".

Political Affairs (CAJP)), secretariat, InterAmerican Juridical Committee and specialized conferences (CIDIP). The Commission was in particular informed that:

(a) Under the *Inter-American Program for the Development of International Law*, OAS implemented two technical cooperation projects in the field of private international law of particular relevance to UNCITRAL: (i) "*Commercial Arbitration: Training Judicial Agents in the Enforcement of International Awards*", with its key objective to promote, among judges and other public officials, knowledge and correct application of the regional and global legal instruments in the area of international commercial arbitration; and (ii) "*Reform of the Secured Transaction Regime in the Americas*", with its key objective to improve the capacity of OAS member States to implement the necessary reforms that will create a modern and effective secured transactions regime;

(b) Among the topics recently studied by the InterAmerican Juridical Committee, three were of relevance to the work of UNCITRAL: (i) Simplified Stock Corporations (relevant to the current work of UNCITRAL Working Group I); (ii) Electronic Warehouse Receipts for Agricultural Products (relevant to the current work by UNCITRAL Working Group IV); and (iii) the InterAmerican Convention on the Law Applicable to International Contracts;

(c) The OAS Secretariat, through its Department of International Law, had been specifically instructed "to promote among member states further development of private international law, in collaboration with agencies and organizations engaged in this area, among them UNCITRAL, the Hague Conference on Private International Law, and the American Association of Private International Law."[72]

194. The representative of OAS expressed appreciation for assistance received from the UNCITRAL secretariat with the implementation of the technical cooperation project in the area of secured transactions, for participation of UNCITRAL in the work of CIDIP and for other collaborative initiatives with UNCITRAL. Benefits of continuing cooperation between UNCITRAL and OAS for States, the organizations concerns and their secretariats were highlighted.

3. IMO

195. A representative of IMO informed that the 2014 World Maritime Day would be celebrated under the theme "IMO conventions: effective implementation". Reference was made to a number of IMO treaty instruments and amendments thereto (in force and not yet in force). In light of their relevance to seaborne trade, these instruments were considered relevant to the work of UNCITRAL. The importance of States ratifying, acceding to, accepting or approving those instruments was highlighted. In that context, IMO informed about its depository and other functions with respect to those instruments, including advice and assistance that it provided to States in connection with the accession to those instruments and with their subsequent implementation.

4. World Bank

196. The Chief Counsel, Legal Vice Presidency, of the World Bank expressed support for an enhanced cooperation and coordination between UNCITRAL and the

[72] OAS General Assembly resolution 2852, para. 12.

World Bank and other development institutions. UNCITRAL's work was viewed by the World Bank as directly relevant to the development agenda, especially in a world where markets and capital flows were increasingly global in nature. UNCITRAL standards and work in the areas of insolvency law and security interests were noted as particularly responsive to immediate needs for commercial law reforms in those areas in developing countries. Other areas of UNCITRAL's work of relevance to the World Bank's development assistance work and where close cooperation and coordination between UNCITRAL and the World Bank would therefore be welcome were settlement of commercial disputes, electronic commerce, public procurement and MSMEs. The area of public-private partnerships was also mentioned as relevant to the work of the World Bank in developing countries.

197. Appreciation was expressed for the active participation by the UNCITRAL secretariat in the World Bank's Global Forum on Law Justice and Development (www.globalforumljd.org), and for the guidance that UNCITRAL has provided to various communities of practice within the Forum. (See also paras. 185-187 above.)

5. IDLO

198. The Commission took note of a report of IDLO on an enhanced cooperation achieved with the UNCITRAL secretariat over last year, in particular though mutual participation in events intended to expand States' appreciation of the contribution of the law to development. The role of the rule of law — the basic cause that IDLO and UNCITRAL shared — to the effort to level the playing field for economic actors, promote the growth of entrepreneurship and MSMEs and to sustain development was highlighted.

6. OHCHR

199. The Commission was informed about the mandate and the work of the United Nations Working Group on Business and Human Rights. Established by the United Nations Human Rights Council in 2011, it was extended for another three years by the Council at its twenty-sixth session, in June 2014. The Working Group's current mandate was to promote the effective implementation of the Guiding Principles on Business and Human Rights[73] and to explore options and make recommendations to strengthen the protection against business-related human rights abuses. The Working Group is advocating for the development of national action plans on business and human rights as a means to facilitate a stock-taking of current gaps in laws and regulations and to formulate clear road maps to address such gaps.

200. The work of UNCITRAL in promoting the rule of law in commercial relations, in particular through its standards in the areas of transparency in investor-State arbitration and public procurement, was seen by the Working Group to be of high relevance to the effective protection of human rights and thus to the work of the Working Group on Business and Human Rights. Given its technical expertise on the issue of corporate and trade law, UNCITRAL was considered ideally placed to work together with the Working Group in ensuring that human rights norms and standards inform law-making related to trade and investment at the national level. As the Working Group was developing guidance for national action plans, it would like to

[73] Available from www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

seek the support and collaboration of the UNCITRAL secretariat to explore opportunities for collaboration.

7. Concluding statements in the Commission

201. The Commission took note of an oral report of the Secretariat on a joint project between the UNCITRAL secretariat and OECD aimed at promoting the culture of commercial and investment arbitration in the Middle East and North Africa (MENA) region.

202. The Commission expressed appreciation for the statements made and noted the high level of cooperation that already existed between UNCITRAL (and its secretariat) and other international organizations active in the field of international trade law. It encouraged its secretariat to look for synergies and to capitalize on those existing by implementing joint projects. This was considered essential in order to avoid duplication and achieve more efficient use of scarce resources available to the UNCITRAL secretariat and those organizations. Particular importance was attached to developing partnerships with regional organizations in light of the capacity of those organizations to better reach out to their member States and disseminate among them information about UNCITRAL and its standards.

203. The importance of joint projects of the OAS, the World Bank and UNCITRAL in the area of security interests for countries in the Latin American and Caribbean region was particularly highlighted as was also highlighted the need for a closer and more substantive cooperation with the Hague Conference and Unidroit. It was noted that joint projects with Unidroit were not yet implemented because topics on the current work programmes of both institutions did not currently lend themselves to such cooperation. The conviction was expressed that it was worth considering implementing UNCITRAL-Unidroit joint projects once appropriate topics appeared.

204. As regards calls by the OHCHR for the support and collaboration of the UNCITRAL secretariat in the current project of the Working Group on Business and Human Rights (see paras. 199-200 above), the Commission agreed with a suggestion that the UNCITRAL secretariat should monitor developments in the area of business and human rights, in cooperation with relevant bodies within the United Nations and beyond and inform the Commission about developments of relevance to UNCITRAL work.

D. International governmental and non-governmental organizations invited to sessions of UNCITRAL and its Working Groups

205. At its current session, the Commission recalled that, at its forty-third session, in 2010, it had adopted the summary of conclusions on UNCITRAL rules of procedure and methods of work.[74] In paragraph 9 of the summary, the Commission had decided to draw up and update as necessary a list of international organizations and non-governmental organizations with which UNCITRAL had long-standing cooperation and which had been invited to sessions of the Commission. The

[74] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), annex III.

Commission also recalled that, further to its request,[75] the Secretariat had adjusted the online presentation of information concerning intergovernmental and non-governmental organizations invited to sessions of UNCITRAL and its working groups and the modality of communicating such information to States, and the adjustments made were to the satisfaction of the Commission.[76]

206. The Commission took note that since its forty-sixth session, in 2013, the following organizations had been added in the list of non-governmental organizations invited to UNCITRAL sessions: the African Center for Cyberlaw and Cybercrime Prevention (ACCP; http://cybercrime-fr.org/index.pl/accp); the German Institution of Arbitration (DIS; www.dis-arb.de); the International Mediation Institute (IMI; www.imimediation.org); and the Jerusalem Arbitration Center (JAC; www.jac-adr.org). The Commission also took note that the following organization had been removed from that list because of its dissolution as announced on its website: Global Business Dialogue on e-Society (GBDe; www.gbd-e.org).

207. The Commission also took note that, pursuant to General Assembly resolution 68/106, paragraph 8, all States and invited organizations were reminded, when they were invited to UNCITRAL sessions, about rules of procedure and work methods of UNCITRAL. Such a reminder is effectuated by inclusion in invitations issued to them of a reference to a dedicated web page of the UNCITRAL website where main official documents of UNCITRAL pertaining to its rules of procedure and work methods could be easily accessed.

XIII. UNCITRAL regional presence

208. The Commission heard an oral report on the activities undertaken by the UNCITRAL Regional Centre for Asia and the Pacific subsequent to the date of the report on that topic to the Commission at its forty-sixth session in 2013 and based on the written report submitted to the Commission (A/CN.9/808).

209. The Commission stressed the importance of the mandate assigned to the Regional Centre for Asia and the Pacific and expressed its appreciation and support for the activities undertaken by that Centre, underlining its importance in enhancing regional contributions to the work of UNCITRAL.

210. The Commission acknowledged with gratitude the contribution of the Government of the Republic of Korea to the Regional Centre for Asia and the Pacific as well as that of the other contributors, in kind or financially, to specific activities of that Regional Centre.

211. Appreciation was expressed, in particular, for the various activities undertaken by the Regional Centre and aimed at longer-term capacity-building such as the joint programme established with the Beijing Normal University on teaching and researching electronic commerce law.

212. The importance of the Regional Centre as a channel of communication between States in the region and UNCITRAL was also stressed. In that regard, it

[75] Ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), paras. 288-298.
[76] Ibid., *Sixty-seventh Session, Supplement No. 17* (A/67/17), paras. 176-178.

was suggested that States in the region could each designate a focal point for matters related to UNCITRAL topics and in charge of coordinating with the Regional Centre.

213. Reference was made to the close cooperation with the host country of the Regional Centre, the Republic of Korea, and in particular its Ministry of Justice, namely by the joint organization of several regional conferences and technical assistance initiatives, such as the Conference on "Enabling Environment for Microbusiness and Creative Economy" and the Second Annual Arbitration Asia-Pacific Conference. The Government of the Republic of Korea reiterated its continuous support to the activities of the Regional Centre.

214. The Commission reiterated that, in light of the importance of a regional presence for raising awareness of UNCITRAL's work and, in particular, for promoting the adoption and uniform interpretation of UNCITRAL texts, further efforts should be made to emulate the example of the Regional Centre for Asia and the Pacific in other regions. The Secretariat was mandated to pursue consultations regarding the possible establishment of other UNCITRAL regional centres.

XIV. Role of UNCITRAL in promoting the rule of law at the national and international levels

A. Introduction

215. The Commission recalled that the item on the role of UNCITRAL in promoting the rule of law at the national and international levels had been on the agenda of the Commission since its forty-first session, in 2008,[77] in response to the General Assembly's invitation to the Commission to comment, in its report to the General Assembly, on the Commission's current role in promoting the rule of law.[78] The Commission further recalled that since that session, the Commission, in its annual reports to the General Assembly, had transmitted comments on its role in promoting the rule of law at the national and international levels, including in the context of post-conflict reconstruction. It expressed its conviction that the promotion of the rule of law in commercial relations should be an integral part of the broader agenda of the United Nations to promote the rule of law at the national and international levels, including through the Rule of Law Coordination and Resource Group[79] supported by the Rule of Law Unit in the Executive Office of the Secretary-General.[80] The Commission noted with satisfaction that that view had been endorsed by the General Assembly.[81]

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[77] For the decision of the Commission to include the item on its agenda, see *Official Records of the General Assembly, Sixty-second Session, Supplement No. 17* (A/62/17), part two, paras. 111-113.

[78] General Assembly resolutions 62/70, para. 3; 63/128, para. 7; 64/116, para. 9; 65/32, para. 10; 66/102, para. 12; and 67/97, para. 14.

[79] www.unrol.org/article.aspx?article_id=6.

[80] *Official Records of the General Assembly, Sixty-third Session, Supplement No. 17* and corrigendum (A/63/17 and Corr.1), para. 386; ibid., *Sixty-fourth Session, Supplement No. 17* (A/64/17), paras. 413-419; ibid., *Sixty-fifth Session, Supplement No. 17* (A/65/17), paras. 313-336; ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), paras. 299-321;

216. At its current session, the Commission heard an oral report by the chairperson of its forty-sixth session and by the Secretariat on the implementation of the relevant decisions taken by the Commission at its forty-sixth session.[82] A summary of the reports is contained in section B below.

217. The Commission recalled that at its forty-third session, in 2010, it had indicated that it considered it essential to maintain a regular dialogue with the Rule of Law Coordination and Resource Group through the Rule of Law Unit and to keep abreast of progress made in the integration of the work of UNCITRAL into United Nations joint rule of law activities. To that end, it had requested the Secretariat to organize briefings by the Rule of Law Unit every other year, when sessions of the Commission were held in New York.[83] Consequently, a briefing had taken place at the Commission's forty-fifth session in New York in 2012,[84] and at the current session, the Commission had a briefing by the Rule of Law Unit. Its summary is contained in section C below.

218. The Commission also took note of General Assembly resolution 68/116 on the rule of law at the national and international levels, by paragraph 14 of which the General Assembly invited the Commission to continue to comment, in its reports to the General Assembly, on its current role in promoting the rule of law. Recalling its deliberations at its forty-sixth session,[85] the Commission welcomed a panel discussion on "Sharing States' national practices in strengthening the rule of law through access to justice". A summary of the panel discussion and comments of the Commission on its role in promoting the rule of law by facilitating access to justice are contained in section D below.

219. The Commission recalled that in conjunction with the approval of the draft convention on transparency at the current session (see para. 106 above), a statement on UNCITRAL's role in promoting the rule of law in commercial relations was delivered by Ms. Irene Khan, Director-General of IDLO. In that statement, Ms. Khan in particular emphasized the role of UNCITRAL standards and tools in the promotion of transparency, accountability and access to information and the importance of those issues especially in the context of investor-State relations. The Commission expressed appreciation for the statement and support for enhanced collaboration with IDLO on promotion of the rule of law in commercial relations.

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ibid., *Sixty-seventh Session, Supplement No. 17* (A/67/17), paras. 195-227; and ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), paras. 267-291.

[81] Resolutions 63/120, para. 11; 64/111, para. 14; 65/21, paras. 12-14; 66/94, paras. 15-17; 67/89, paras. 16-18; and 68/106, para. 12.

[82] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), paras. 273 and 275.

[83] Ibid., *Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 335.

[84] Ibid., *Sixty-seventh Session, Supplement No. 17* (A/67/17), paras. 195-227.

[85] Ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 291.

B. Reports on the implementation of the relevant decisions taken by the Commission at its forty-sixth session

220. The chairperson of UNCITRAL's forty-sixth session reported that he had spoken at the eighth session of the Open Working Group (New York, 3-7 February 2014),[86] in which he conveyed to the Group that a sound regulatory framework for businesses, investment and trade was a powerful driving force in addressing such sustainable development challenges as joblessness, youth unemployment and the shortcomings of a large informal economy. The existence of such a framework largely conditioned the contribution of the private sector to sustainable development. Increasing attention by States to the commercial law area should thus be regarded as one of important transformative changes that should come clearly across in any post-2015 development agenda.

221. The Commission also heard that the UNCITRAL secretariat, in cooperation with the Asian-African Legal Consultative Organization (AALCO), IDLO and ICC, organized a side event on the margins of the eighth session of the Open Working Group on the enabling environment for rule-based business, investment and trade (New York, 6 February 2014).[87] The side event focused on the establishment of enabling environments for rule-based business, investment and trade as critical elements for conflict prevention, post-conflict reconstruction and the promotion of rule of law and governance in commercial relations.

222. The Commission took note that a draft guidance note of the Secretary-General on the promotion of the rule of law in commercial relations, about which the Commission was informed at its forty-sixth session, in 2013,[88] was presented by the Office of Legal Affairs of the United Nations Secretariat at the expert level meeting of the Rule of Law Coordination and Resource Group of the United Nations on 20 December 2013. It was noted that the text, which was made available to the Commission for information purposes was currently undergoing the final approval and was expected eventually to be circulated across the United Nations, including United Nations country offices.

223. In ensuing discussion a representative of ICC informed the Commission about its continuing efforts, in particular through the Global Business Alliance on Post-2015 Development Agenda, to convey across the United Nations business perspectives related to rule of law and sustainable development. Issues highlighted were all relevant to the work of UNCITRAL since they dealt with barriers to private investment, entrepreneurship and trade and the sound regulatory environment for business.

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[86] The statement by the chairperson of UNCITRAL's forty-sixth session, Mr. Michael Schoell, is available at http://sustainabledevelopment.un.org/owg8.html, under "Statements & Presentations", and on the UNCITRAL website (www.uncitral.org/pdf/english/whats_new/2014_02/UNCITRAL-OWG-statement.pdf).

[87] Information about the side event may be found at http://sustainabledevelopment.un.org/owg8.html and on the UNCITRAL website (www.uncitral.org/uncitral/en/about/whats_new_archive.html, 29/01/2014 entry).

[88] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 273.

224. The Commission was also informed about controversies around the concept of the rule of law that arose in the work of the Open Working Group. The Commission was therefore cautioned against embarking into areas that were considered by some States to be politicized since otherwise neutrality of UNCITRAL could be compromised and its mandate diluted. Added value in integrating UNCITRAL work in the United Nations rule of law strategies was questioned.

225. In response, it was noted that the role of UNCITRAL in promoting the rule of law in commercial relations was undisputable as evidenced by numerous General Assembly resolutions on UNCITRAL matters, including the one on the establishment of UNCITRAL, and by decisions of UNCITRAL itself. Rules regulating commercial transactions should not only be clear but also fair in order for them to be able to mitigate risks of abuses of power by commercially stronger parties and to make commercial relations economically sustainable in the long run. By reconciling in a balanced and neutral way interests of various stakeholders UNCITRAL played an important role in that regard. Integration of UNCITRAL work to broader United Nations activities was considered desirable for the benefit of end-users of UNCITRAL's standards. Concerns about compromised neutrality of UNCITRAL and dilution of its mandate as a result of closer cooperation and coordination with relevant United Nations bodies were not widely shared.

226. Concern was expressed about particular points in the draft guidance note circulated at the session, in particular references to human rights, the work of UNCITRAL in the area of commercial fraud and regulation of MSMEs. In response to the criticism that the draft did not address some important aspects, the specific scope and focus of the draft was explained by reference to the purpose of the guidance note as an advocacy tool for the promotion of the work of UNCITRAL across the United Nations, in particular in United Nations country offices.

227. The Commission reiterated its conviction that the implementation and effective use of modern private law standards in international trade are essential for advancing good governance, sustained economic development and the eradication of poverty and hunger. The promotion of the rule of law in commercial relations should therefore be an integral part of the broader agenda of the United Nations to promote the rule of law at the national and international levels. The Commission encouraged the Secretary-General to devise effective practical mechanisms to achieve such integration.

228. The Commission also emphasized the relevance of the work by UNCITRAL to post-2015 development agenda and expressed its appreciation to the chairperson at its forty-sixth session, Mr. Michael Schoell, and the secretariat, for efforts to bring the attention of relevant bodies involved in discussion of the new development agenda to issues dealt with by UNCITRAL. The Commission requested its Bureau at the current session and its secretariat to continue to take appropriate steps to ensure that the areas of work of UNCITRAL and the role of UNCITRAL in the promotion of the rule of law and in sustainable development are not overlooked in the discussion of the post-2015 development agenda and sustainable development financing, and to report to the Commission at its next session on the steps taken in that direction.

C. Summary of the rule of law briefing

229. The rule of law briefing was opened by a keynote speech of the Special Representative of the Secretary-General of the United Nations on Post-2015 Development Planning, Ms. Amina Mohammed. Ms. Mohammed referred to the envisaged place of international trade in post-2015 development agenda recognizing that trade remained one of the most productive ways of integrating into the global economy and propelling developing countries to become less aid dependent. The Commission was informed that, throughout the consultation phase of the post-2015 process, the United Nations system had clearly recognized the importance of fair, stable and predictable legal frameworks for generating inclusive, sustainable and equitable development, as well as economic growth and employment. It also acknowledged that without an enabling environment for rule-based business, investment and trade, the world would not be able to tackle development challenges, and Governments should therefore be equipped with knowledge and tools to be able to fully utilize trade as a powerful tool for sustainable development.

230. The Commission was also informed about steps expected to be taken by States and the United Nations system during the time leading to the adoption of the new development agenda in September 2015. Ms. Mohammed emphasized the need for transformative actions to promote inclusive and sustainable growth and decent employment, including through economic diversification, financial inclusion, efficient infrastructure, trade, relevant education and skills training, and the potential role of UNCITRAL in assisting States to devise and implement such transformative actions.

231. The Director of the Rule of Law Unit in the Executive Office of the Secretary-General then briefed the Commission about developments related to the United Nations rule of law agenda occurred since the 2012 rule of law briefing in UNCITRAL. Efforts being made towards effective integration of the promotion of the rule of law in commercial relations in the United Nations broader rule of law agenda were particularly highlighted. The Commission was pleased to note an increased number of references to its activities and areas relevant to its work in the Secretary-General's reports on rule of law issues. The Commission was invited to consider approaches to measuring effectiveness of its rule of law activities.

232. The General Counsel of the Global Compact Office complemented the rule of law briefing by informing the Commission about the Business Engagement Architecture, in particular its business for the rule of law segment, launched by the Secretary-General in September 2013, and work on formulating the global rule of law business principles. She also referred to the role that UNCITRAL standards, tools and expertise, in particular in the areas of public procurement and privately financed infrastructure projects, could play in the Global Compact's projects. The Commission was also informed about plans to update the United Nations publication "United Nations and Global Commerce". UNCITRAL and its secretariat were invited to cooperate in relevant projects of the Office.

233. The Commission expressed appreciation to Ms. Mohammed for her keynote speech, to the Director of the Rule of Law Unit for the briefing and to the General Counsel of the Global Compact Office for her statement and ideas about closer cooperation with UNCITRAL. The Commission encouraged closer cooperation and

consultations with United Nations bodies on issues of UNCITRAL work of relevance to them.

D. UNCITRAL comments to the General Assembly on its role in the promotion of the rule of law through facilitating access to justice

1. Summary of the panel discussion

234. During the panel discussion, the invited speakers from Austria, Colombia, UNDP, the World Bank Group and EBRD presented surveys of States' national practices and United Nations projects in strengthening the rule of law through access to justice in the context of enforcement of contracts, insolvency proceedings, protection of security interests, legal empowerment and public procurement.

235. An advisor on global indicators of the World Bank Group presented a survey of States' practices with enforcement of contracts undertaken by the World Bank Group, in cooperation with, among others, the UNCITRAL secretariat. The survey covering 189 countries compared experiences for entrepreneurs around the world when dealing with local courts in enforcing contract and highlighted the need for reform. The main trend identified through the survey was improvement in case management and speed of enforcement through creation of commercial courts and e-courts and appearance of mechanisms specifically designed to facilitate women's and MSME's access to justice through small claims courts. The Commission was informed about existing studies linking efficient contract enforcement with decreased informality, improved access to credit and increase in trade. It took note of upcoming research on courts touching on such issues as publication of judgements and availability of voluntary mediation.

236. The representative of Colombia presented an overview of legal reforms in the areas of secured transactions and insolvency law in Latin America and the Caribbean, focusing on issues of access to justice. She referred to the role of UNCITRAL standards and technical assistance of the UNCITRAL secretariat in those reforms. Examples of models for access to justice in the context of operation of movable property security registries and insolvency proceedings in the region were provided. The speaker also shared information about existing efforts in the region to address particular aspects of insolvency of MSMEs and their access to justice in insolvency and protection of security interests contexts.

237. The representative of UNDP shared insights into the work of the Commission on Legal Empowerment and other United Nations bodies that dealt with issues of legal empowerment and access to justice for the most marginalized segments of societies. Reports and studies by those bodies identified the extent of the relationship between informality and the perpetuation of poverty and inequality and recommended empowerment strategies particularly in relation to informality. The Commission took note of UNDP's experience with promoting low-cost justice services, community-based and informal justice systems and legal aid and legal awareness, in particular: (a) the implementation of country programming such as in Afghanistan supporting the legal empowerment of street vendors; and (b) programmes in other countries on decentralization of justice services to rural areas, mobile courts, justice centres and legal aid in civil and commercial matters. Efforts to understand the linkages between UNCITRAL work and low-cost and

empowerment-based development programming of UNDP and other United Nations bodies were welcomed by the speaker.

238. Representatives of Austria and EBRD presented surveys of States' practices with facilitating access by aggrieved suppliers to justice in the context of public procurement. They identified major trends on wide range of issues related to review of procurement decisions, in particular as regards an independent administrative review, compensation mechanisms, actions that could be taken with respect to procurement contracts entered into force, groups of persons that were entitled to challenge procurement decisions, types of procurement decisions that could be challenged, deadlines for submission of complaints and taking decisions on complaints and safeguards against abuses. They concluded that there was still much room for improvement across the world to achieve impartiality and efficiency in the review of procurement decisions. The standards provided by UNCITRAL in its 2011 Model Law on Public Procurement[89] and accompanying guidance in the Guide to Enactment of that Model Law[90] were considered useful in implementing the required reforms.

239. The Commission expressed its appreciation to the panellists for their statements and noted that the surveys presented were relevant to standards being considered, administered or already prepared by UNCITRAL (in particular in the areas of settlement of commercial disputes, public procurement, contracts for the international sale of goods, e-commerce, insolvency law, security interests and an enabling legal environment for MSMEs).

2. Comments by the Commission on its role in promoting the rule of law by facilitating access to justice

240. The Commission confirmed its role in strengthening the rule of law, including by facilitating access to justice. Specifically on the subtopic of the panel discussion (see paras. 234-239 above), the Commission noted that UNCITRAL work was relevant to all dimensions of access to justice (normative protection, capacity to seek remedy, and capacity to provide effective remedies):

(a) As relevant to the normative protection, UNCITRAL facilitates the law-making task of States by recognizing legitimate grievances and according to them adequate legal protection and providing appropriate range of remedies or compensation in law;

(b) As relevant to capacity to seek remedy, UNCITRAL activities are relevant in building capacity of persons to interpret, apply and implement international commercial law standards properly. Such UNCITRAL tools as the UNCITRAL website in the six languages of the United Nations, CLOUT, digests and the Transparency Registry and teaching, training and dissemination activities are all relevant for increasing legal awareness and legal empowerment. Some UNCITRAL standards directly call for publicity of legal texts applicable to commercial relations between parties (see e.g. article 5 of the UNCITRAL Model Law on Public Procurement);

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[89] Available from www.uncitral.org/uncitral/en/uncitral_texts/procurement_infrastructure/2011Model.html.

[90] Ibid.

(c) Capacity to seek remedy also encompasses access to formal and also informal justice mechanisms. UNCITRAL offers a sound regulatory framework for such complementary means of adjudication as arbitration and alternative dispute resolution (ADR). It assists States with strengthening the linkages between formal and those informal justice mechanisms and building interfaces between them;

(d) As relevant to capacity to provide effective remedies through effective adjudication, due process and enforcement, UNCITRAL, through its standards, promotes fair, efficient, accountable and independent justice bodies. Its standards for example address such issues as minimum requirements that administrative review bodies in the context of public procurement or arbitral tribunals should meet to be considered capable of effectively addressing various types of grievances and delivering fair outcomes through adjudication. They also touch upon issues of time and costs involved in resolving disputes, other aspects of due process, public interest litigation, public oversight and government accountability. Some of the standards and tools focus on enforcement of arbitral awards. Judicial training carried out by the UNCITRAL secretariat, CLOUT, digests and other tools and activities aimed at promoting uniform interpretation and application of international commercial law standards are also all very relevant in this context;

(e) Finally, UNCITRAL standards, in particular those in the area of e-commerce calling inter alia for legal recognition, admissibility and evidential weight of data messages and e-signatures, proved to be relevant in modernization of civil justice and administrative review procedures. UNCITRAL might be expected to contribute further in that respect, in particular as regards low-value cross-border disputes.

XV. Planned and possible future work

A. General

241. The Commission recalled the agreement, made at its forty-sixth session in 2013, that it should reserve time for discussion of UNCITRAL's future work as a separate topic at each Commission session.[91] There was general support for such a review of the Commission's overall work programme as a tool to facilitate effective planning of its activities.

242. The Commission heard a summary of the documents prepared to assist its discussions on future work at the forty-seventh session (A/CN.9/807 and A/CN.9/816). It noted that those documents addressed UNCITRAL's main activities, i.e. legislative development and activities designed to support the effective implementation, use and understanding of UNCITRAL texts (collectively referred to as "support activities").

243. It was also agreed that the resource constraints identified in those documents, and similar constraints within member States, required prioritization among

[91] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 310.

UNCITRAL's activities. The Commission recalled some general considerations in that regard that it had discussed at its forty-sixth session.[92]

B. Legislative development

244. As regards the tabular presentations of legislative activity (current and possible future work), and the summaries of support activities in documents A/CN.9/807 and A/CN.9/816:

(a) A question was raised as regards the presentation of possible future work on online dispute resolution in Table 2. It was suggested that the existing mandate of Working Group III (dating from 2010) would encompass the work described in the relevant line of Table 2. The Commission recalled, with reference to the reports of its forty-fourth and forty-fifth sessions, that the original mandate could be considered to include the preparation of the guidelines for ODR providers and platforms referred to in that Table;[93]

(b) It was agreed that the conclusions relating to the existing mandates and future work of each of the six Working Groups reached earlier in the session (see paras. 128-130, 134, 140, 145-150, 154-158 and 162-163 above) would not be reopened. Thus, it was confirmed, the Working Groups would continue to develop legislative texts and associated guidance in the existing subject areas for the year to the forty-eighth Commission session in 2015. It was noted that the reports of four Working Groups (numbers I, II, III and VI) indicated the possible presentation of texts to the Commission for its consideration and adoption at that session.

245. A concern was raised that, as these decisions had been made earlier in the Commission's deliberations, it would be extremely difficult for the Commission while discussing future work to overturn the conclusions involved. It was proposed, therefore, that at future sessions the reports of Working Groups and planning for future work should be considered together.

246. It was emphasized that, as a consequence of these conclusions, there was no opening for additional legislative development before a Working Group in the coming year. A suggestion in paragraph 31 of document A/CN.9/807 — that a seventh Working Group could be created to allow for legislative development in other subject-areas — was not supported.

247. It was further highlighted that the forty-eighth session of the Commission might require a relatively lengthy session to accommodate the anticipated volume of texts for the Commission's consideration.

248. Additional suggestions made in paragraph 29(b) of document A/CN.9/807 so as to enhance flexibility in the legislative development process, i.e. to consider allocating more than one topic to a Working Group and to review the automatic allocation of two weeks' conference time annually to each Working Group, received some support. It was not considered necessary to implement this approach at this

[92] Ibid., paras. 294 to 309.

[93] Ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 213; and ibid., *Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 73.

session, but the Commission agreed that the possibility could indeed be further discussed in the future.

249. As regards the suggestion made in paragraphs 33-35 of document A/CN.9/807 — to follow a more flexible approach to combining formal and informal working methods (terms described in para. 19 of that document) — there was support for greater flexibility on a case-by-case basis and some support for greater use of informal working methods. These expressions of support, however, were made subject to two caveats: first, that the main purpose of informal working methods was to prepare for submission of legislative proposals to a Working Group or directly to the Commission and, secondly, that their use should not compromise the resources allocated to support activities. The Commission reaffirmed its support for formal working methods as the primary method of legislative development, given the transparent, inclusive and multilingual process involved, which supported the universal applicability of UNCITRAL texts. In particular, it was emphasized that any working method that might reduce the ability of developing countries to have a voice in legislative development should be avoided.

250. Noting the limitations on UNCITRAL's resources in general and availability of conference time in particular, a view was expressed that the primary aim of legislative development should be the production of legal texts (rather than supporting guidance, which might more appropriately be developed using informal working methods).

251. As regards a suggestion in paragraph 73(e) of document A/CN.9/816 that the Commission might set a tentative legislative development plan for 3-5 years, the prevailing view was that longer-term planning would remain an exceptional situation. The Commission recalled concerns as regards creating de facto permanent or semi-permanent Working Groups.[94] It was also reaffirmed that the Commission retained the authority and responsibility for setting UNCITRAL's workplan, especially as regards the mandates of Working Groups, though the role of Working Groups in identifying possible future work and the need for flexibility to allow a Working Group to decide on the type of legislative text to be produced were also recalled. Accordingly, the Commission agreed that it would not express itself at this session on future work extending beyond its forty-eighth session in 2015, but would confine itself to setting a workplan implementing the priorities noted above for the year to that session.

252. A concern was also expressed that the existing modus operandi of Working Groups tended to encourage longer mandates being suggested or developed by each Working Group for each subject area. In response, it was emphasized that the Commission would continue to review the mandates concerned on an annual basis. A proposal to set maximum time frames for legislative development in a subject area was considered to be impractical in the UNCITRAL context, and did not receive support.

253. A request was also made for information available from each Working Group on the progress and status of its work, as set out in the reports of the Working Groups, to be collated and presented to the Commission so as to allow the context

[94] Ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 310. See also paragraph 35 of document A/CN.9/807.

of each Working Group's suggestions for future work and for prioritization among existing and new topics to be clearer.

254. It was also stated that, as existing projects came to a close, the Commission might consider at a future session reducing the number of Working Groups to five, given the resource implications of servicing six Working Groups (as noted in para. 32 of document A/CN.9/807).

255. As regards future work beyond the work of each Working Group noted above, the Commission:

(a) Reaffirmed its decision at its forty-sixth session to hold a colloquium to recognise the thirty-fifth anniversary of the United Nations Sales Convention in 2015;[95]

(b) Reaffirmed its decision made earlier in the session to hold a colloquium to explore possible future work in the field of electronic commerce, addressing (among other things) identity management, trust services, electronic transfers and cloud computing (see para. 150 above);

(c) Considered the proposal for possible legislative development in the field of public-private partnerships (PPPs). It was noted that no conference time was available for that topic in the coming year. Some delegations, while expressing gratitude for the efforts made to delineate the scope of possible future work, including the holding of a colloquium in March 2014,[96] considered that legislative development on PPPs would involve a significant and lengthy project, and for that reason did not support it. In that regard, it was noted that the colloquium report (A/CN.9/821), which was before the Commission for its consideration at the current session, identified 15 topics for consideration in developing a legislative text on PPPs, some of which appeared to be substantial.

256. It was also stated that the existing UNCITRAL texts on privately financed infrastructure projects[97] could be used to harmonize and modernize laws in that field at the national level.

257. It was recalled, however, that PPPs constituted a topic of importance to all regions of the world, and that the colloquium had highlighted that importance and suggested the need for additional legislative work. The importance of PPPs to developing countries was also raised, and it was said that developing countries would encourage the Commission to take the subject up. The experience arising from consultations within one State, which had indicated support for legislative development in PPPs, was also drawn to the attention of the Commission. Accordingly, a suggestion was made that the topic of PPPs should be remitted to a working group whose existing mandate could be expected to be completed by the forty-eighth Commission session in 2015, should such a working group be identified.

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[95] Ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 315.

[96] Materials of the colloquium are available from www.uncitral.org/uncitral/en/commission/colloquia/public-private-partnerships-2014.html.

[97] The *UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects* (2000) and the *UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects* (2003), available from www.uncitral.org/uncitral/uncitral_texts/procurement_infrastructure.html.

258. After discussion, the Commission did not adopt that suggestion. It was noted that the Commission had not made any decision that work on PPPs should be undertaken at the working group level. The Commission reserved the possibility to consider the matter afresh if and when working group resources became available. It was also recalled that there was no certainty that any such resources would become available in 2015.

259. The question of whether the Secretariat should continue to prepare for possible legislative development in PPPs was raised. Views differed on whether a mandate to take up the subject would be given were resources available. One delegation considered that the topic was not yet amenable to harmonization.

260. Support was expressed for the Secretariat to continue to advance such preparations, internally and using informal consultations, so as to ensure that a working group could take up the subject if a mandate were given. Although some delegations considered that no such additional work would be necessary, because (as the colloquium report noted) the topic was ready for legislative development to commence, the view prevailed that very limited additional preparatory work would be appropriate provided that it did not divert UNCITRAL resources from the servicing of existing working groups and support activities. It was emphasized, however, that the work should be limited and would involve Secretariat studies of relevant issues, focussing on enabling the Secretariat being ready to assist the Commission with a further review of whether or not to take up legislative development in this subject area (an approach taken by the Secretariat for emerging issues more generally). It was agreed that the possibility of future work in PPPs would be further discussed by the Commission at its forty-eighth session in 2015.

C. Support activities

261. The Commission expressed its appreciation for the support activities described in documents A/CN.9/807 and A/CN.9/816, as reviewed in more detail earlier in the session (see paras. 164-228 above). It acknowledged the difficulty of ensuring the availability of resources for such activities in the context of UNCITRAL's legislative work which, it was said, should take priority in UNCITRAL's activities.

262. It was recognized that seeking additional resources from the United Nations regular budget for support activities was unlikely to be successful in the current economic climate.

263. The discussions earlier in the session emphasizing the importance of support activities were recalled (see e.g. paras. 164, 169, 170, 181, 184, 187, 202, 209 and 215 above), and the need to encourage such activities at the global and regional levels through both the Secretariat and member States was highlighted.

264. In the light of the limited resources available for support activities, the Commission encouraged the Secretariat to seek partnerships and forge appropriate alliances with relevant international organizations, possibly including the Hague Conference and Unidroit, and with relevant bilateral and multilateral donors and non-governmental organizations. In addition, there was support for the suggestion in paragraph 65(b) of document A/CN.9/816 that the Secretariat should promote increased awareness of UNCITRAL's texts in these organizations and within the

United Nations system. The representative of the International Insolvency Institute stated that his organization would consider supporting UNCITRAL's activities as suggested in document A/CN.9/816.

265. The suggestion in paragraph 65(c) of document A/CN.9/816 that the expertise available in the Working Groups and Commission should be used to help promote adoption and use of UNITRAL texts also received broad support. Positive experience of one delegation in encouraging the use of UNCITRAL texts in that way was raised.

266. The Commission reaffirmed the Secretariat's mandate to explore alternative sources of financing to allow for more active support activities to be undertaken. Voluntary contributions were encouraged. The Commission, however, cautioned that untied funding might be difficult to raise, and that significant contributions of this type should not be expected. In addition, it was said, there could be risks to achieving UNCITRAL's core mandate if the proportion of extrabudgetary funding was excessive as compared with UNCITRAL's regular budget resources.

XVI. Relevant General Assembly resolutions

267. The Commission took note of the following four resolutions adopted by the General Assembly on 16 December 2013 regarding the work of the Commission: resolution 68/106 on the report of the United Nations Commission on International Trade Law on the work of its forty-sixth session; resolution 68/107 on revision of the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency and part four of the UNCITRAL Legislative Guide on Insolvency Law; resolution 68/108 on UNCITRAL Guide on the Implementation of a Security Rights Registry; and resolution 68/109 on UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration and Arbitration Rules (as revised in 2010, with new article 1, para. 4, as adopted in 2013) (see para. 218 above for consideration by the Commission of General Assembly resolution 68/116 on the rule of law at the national and international levels, which also relate to the work of the Commission).

268. Upon considering paragraph 3 of General Assembly resolution 68/106, the Commission welcomed the recognition by the General Assembly of the Commission's opinion that the secretariat of UNCITRAL should fulfil the role of the transparency repository and the invitation to the Secretary-General to consider performing that role through the Commission's secretariat. It was recalled that at the current session the Commission had reiterated its mandate to its secretariat to establish and operate the Transparency Registry, initially as a pilot project, and to that end, to seek any necessary funding (see para. 110 above). The Commission understood paragraph 3 of General Assembly resolution 68/106 as encouraging the Secretariat to seek all possible means and resources to fulfil the functions of the transparency repository through the UNCITRAL secretariat, possibly on extrabudgetary resources in its initial stages. Acknowledging with appreciation the commitment by the European Union to provide a substantive contribution (see para. 109 above), the Commission appealed to States and interested organizations to make voluntary contributions to that end.

XVII. Other business

A. Entitlement to summary records

269. The Commission recalled that at its forty-fifth session, in 2012, it decided, while not relinquishing its entitlement to summary records under General Assembly resolution 49/221, to request that digital recordings continue to be provided at its forty-sixth and forty-seventh sessions, in 2013 and 2014, on a trial basis, in addition to summary records, as was done for the forty-fifth session. At that session, the Commission agreed that at its forty-seventh session, in 2014, it would assess the experience of using digital recordings and, on the basis of that assessment, take a decision regarding the possible replacement of summary records by digital recording. The Commission requested the Secretariat to report to the Commission on a regular basis on measures taken in the United Nations system to address possible problems with the use of digital recordings. It also requested the Secretariat to assess the possibility of providing digital recordings at sessions of UNCITRAL working groups, at their request, and to report to the Commission at its forty-seventh session, in 2014.[98]

270. The Commission also recalled that, at its forty-sixth session, in 2013, it was informed about the experience with digital recordings in the United Nations generally, problems encountered with the use of UNCITRAL meetings digital recordings and efforts made to resolve them.[99] At that session, the Commission confirmed its decisions taken at the forty-fifth session as regards a trial use of digital recordings and also agreed that digital recordings at sessions of UNCITRAL working groups should be provided and made publicly available by default.[100] A decision on whether digital recordings of working groups should be accompanied by a script was deferred to a future session.[101]

271. At the current session, the Commission assessed the experience of using UNCITRAL meetings digital recordings. In that context, problems with receiving on time and in all six languages digital recordings in 2012 when the UNCITRAL session was held in New York were recalled. The Commission was also informed about delays with the release of digital recordings of the latest New York sessions of the UNCITRAL Working Groups. Another year for trial was considered necessary to allow UNCITRAL and its secretariat to ascertain whether all obstacles to the release of digital recordings in all six languages to the UNCITRAL secretariat soon after a session had been completed, regardless of where a session is held, have indeed been eliminated.

272. Reference was also made to General Assembly resolution 67/237, paragraph 26, stating that "the further expansion of [transition to digital recordings of meetings in the six official languages of the Organization as a cost-saving measure] would require consideration, including of its legal, financial and human resources implications, by the General Assembly and full compliance with the

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[98] *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 249.

[99] Ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), paras. 334-340.

[100] Ibid., paras. 341-342.

[101] Ibid., para. 342.

relevant resolutions of the Assembly". It was suggested that the General Assembly should authorize in one way or another its subsidiary bodies, such as UNCITRAL, to make the transition from summary records to digital recording. Otherwise, contradictions in the Commission or the Sixth Committee with the Fifth Committee on that matter could arise if UNCITRAL were to decide to make such transition.

273. The Commission also took note of other outstanding issues to be considered in verifying that digital recordings performed at least the same functionalities as summary records. In particular, it was noted that, although the UNCITRAL summary records were not part of the Official Records of the General Assembly, they did appear as masthead documents and in the UNCITRAL Yearbook (prepared in English, French, Russian and Spanish). Mechanisms for making digital recordings part of UNCITRAL Yearbooks and costs associated with that and their allocation were not yet clear. The Yearbook was currently published only in electronic form online and on CD-ROM. The size of the audio files would currently almost certainly prevent CD-ROM publication of digital recordings.

274. In addition, summary records made available in the United Nations Official Document System (ODS) (starting with A/CN.9/SR.520 (1994)) were fully searchable (with sophisticated options) in the ODS in all United Nations six languages. All summary records reproduced in the UNCITRAL Yearbook (historically only selected records, but currently all) were also searchable on the UNCITRAL website, via a less sophisticated search engine, in English, French, Russian and Spanish (i.e. the languages in which the UNCITRAL Yearbook was being published). Currently such searching options were not available for digital recordings.

275. The Commission recalled that at its last session an issue of transcripts that could accompany digital recordings was raised, which was considered as alleviating some of the concerns raised above. It was recalled that reference was made to the possibility of preparing transcripts only in English.[102]

276. On the basis of that assessment, the Commission decided to prolong the practice of providing to UNCITRAL digital recordings in parallel with summary records for at least one more year. It was noted that at its next session the Commission would again assess its experience with the use of digital recordings. It was understood that until it was ascertained that no obstacles existed to making the transition from summary records to digital recordings, summary records would have to be provided to the Commission. Confidence was expressed that with rapid technological development, satisfactory solutions across the United Nations would eventually be found. Meanwhile, the practice with the use of digital recording of UNCITRAL meetings should continue and be appropriately monitored.

B. Internship programme

277. The Commission recalled the considerations taken by its secretariat in selecting candidates for internship.[103] The Commission was informed that, since the Secretariat's oral report to the Commission at its forty-sixth session, in July 2013,

[102] Ibid., para. 335.

[103] Ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), paras. 328-330.

twenty-three new interns had undertaken an internship with the UNCITRAL secretariat, nine of whom in the UNCITRAL Regional Centre for Asia and the Pacific. Most interns had come from developing countries and countries in transition and were female. The Commission was informed that the procedure for selecting interns that was put in place from 1 July 2013 allowed attracting considerably more applications from all geographical regions. As a result, finding eligible and qualified candidates for internship from under-represented countries, regions and language groups has been considerably facilitated.

278. The Commission was informed about significant changes introduced on 13 January 2014 in eligibility requirements for internship with the United Nations, which were expected to produce a further positive impact on the pool of qualified applicants. Before that time, only students involved in a degree programme in a graduate school at the time of application and during the internship were eligible to apply. Since 13 January 2014, students in the final academic year of a first university degree programme and holders of a university degree who would be able to commence the internship within one year of graduation were also eligible to apply. States and observer organizations were requested to bring those important changes to the attention of interested applicants.

C. Evaluation of the role of the Secretariat in facilitating the work of the Commission

279. The Commission recalled that at its fortieth session, in 2007,[104] it had been informed of the programme budget for the biennium 2008-2009, which listed among the expected accomplishments of the Secretariat "facilitating the work of UNCITRAL". The performance measure for that expected accomplishment was the level of satisfaction of UNCITRAL with the services provided, as evidenced by a rating on a scale ranging from 1 to 5 (5 being the highest rating).[105] At that session, the Commission had agreed to provide feedback to the Secretariat.

280. From the fortieth session until the forty-fifth session of the Commission, in 2012, the feedback was provided by States attending the annual sessions of UNCITRAL in response to the questionnaire circulated by the Secretariat by the end of the session. That practice had changed since the Commission's forty-fifth session, in 2012. As regards the forty-sixth session of UNCITRAL, such an evaluation questionnaire was circulated to all States by a note verbale of 27 May 2014. It covered the period from 8 July 2013 to 6 July 2014. The deadline for submission of evaluation was 6 July 2014, the day before the opening of the current session of the Commission.

281. The Secretariat noted with regret that the 2014 questionnaire had elicited only six responses. Although the level of satisfaction with the services provided to UNCITRAL by the UNCITRAL secretariat remained high (five States respondents gave 5 out of 5 and one State respondent 4 out of 5), it was essential to receive from more States the feedback about the UNCITRAL secretariat's performance for a

[104] Ibid., *Sixty-second Session, Supplement No. 17* (A/62/17), part one, para. 243.

[105] A/62/6 (Sect. 8) and Corr.1, table 8.19 (d).

more objective evaluation of the role of the Secretariat. This was required for budgetary and other purposes.

282. Distribution of the questionnaire in the Commission during the session elicited eleven additional responses (ten marked 5 out of 5 and one 4 out of 5).

283. The Commission exchanged views about some aspects of work of the Secretariat. Some delegations recalled the importance of timely production of documents in all six languages of the United Nations, although it was noted that constraints were understandable and it was clear that not all production steps were within the control of the UNCITRAL secretariat. Suggestions were also made to reinforce technical assistance work, cooperation with regional organizations and academia, and to explore new means to disseminate information about UNCITRAL and its work. Most recent technical assistance efforts by the UNCITRAL secretariat, in particular in the area of dispute settlement in the Middle East, were referred to as potentially producing positive long-term impact.

284. Efforts of the Secretariat to increase the visibility of UNCITRAL within the United Nations system and find appropriate synergies with other United Nations bodies were considered an important and welcome addition to the work of the UNCITRAL secretariat. The secretariat was encouraged to continue exploring such synergies and expanding outreach to delegations of States to various United Nations bodies with the view of increasing their awareness of the work of UNCITRAL and its relevance to other areas of work of the United Nations.

285. In response to a suggestion to establish in the UNCITRAL secretariat a focal point for contacts with delegates, it was explained that the centralized mail box of UNCITRAL uncitral@uncitral.org was already treated as such. Delegations in the Asia and Pacific Region were also encouraged to establish closer contact with the UNCITRAL Regional Centre for Asia and the Pacific.

286. The presence of Member States at sessions of UNCITRAL was also discussed. The number of delegations present at UNCITRAL sessions was considered by some delegates as indicative of the success of the work of UNCITRAL and its secretariat. Other delegates argued that the interest of States in the work of UNCITRAL might be high but financial constraints did not allow some of them to send delegations to UNCITRAL sessions. It was recalled that the trust fund established to provide travel assistance to developing countries that were members of the Commission (see para. 168 above) and other measures as regards least developed countries envisaged in the annual resolutions of the General Assembly on the report of UNCITRAL intended to address that issue but success was limited. The suggestion was made that the Secretariat should undertake fundraising activities to raise according to any applicable rules required finance from donors and the private sector for such purpose. Costs involved were considered miniscule in comparison with benefits derived from participation of States in sessions of UNCITRAL.

287. A view was expressed that States should take more responsibility for the level and quality of participation of their delegations in the work of UNCITRAL. A visible discrepancy between information entered in the lists of participants and delegations actually present in the room was noted. It was also stated that States should also make more efforts to use the session time more efficiently.

288. After discussion, the Commission expressed general satisfaction with the work of the Secretariat and appealed to States to be more responsive to the request for evaluation of the role of the Secretariat in servicing UNCITRAL. It was noted that performance monitoring was important and was required across the United Nations. In response to proposals to make the evaluation exercise not so frequent, it was agreed that until new budget procedures were introduced, the procedure established since the Commission's forty-fifth session, in 2012, would be followed that would require the annual evaluation by States of the role of the Secretariat in servicing UNCITRAL. Positive aspects of that procedure were highlighted, in particular since it allowed to present comprehensive evaluation of services provided to UNCITRAL and its working groups throughout the year, not only during annual sessions of UNCITRAL.

XVIII. Date and place of future meetings

289. The Commission recalled that, at its thirty-sixth session, in 2003, it had agreed that: (a) its working groups should normally meet for a one-week session twice a year; (b) extra time, if required, could be allocated to a working group provided that such arrangement would not result in the increase of the total number of 12 weeks of conference services per year currently allotted to sessions of all six working groups of the Commission; and (c) if any request by a working group for extra time would result in an increase of the 12-week allotment, the request should be reviewed by the Commission, with proper justification being given by that working group regarding the reasons for which a change in the meeting pattern was needed.[106]

290. The Commission also recalled that, at its forty-fifth session, in 2012, it took note of paragraph 48 of General Assembly resolution 66/246 on questions relating to the proposed programme budget for the biennium 2012-2013, by which the Assembly had decided to increase non-post resources in order to provide sufficient funding for servicing the work of the Commission for 14 weeks and to retain the rotation scheme between Vienna and New York. In the light of that decision, the Commission noted at that session that the total number of 12 weeks of conference services per year could continue being allotted to six working groups of the Commission meeting twice a year for one week if annual sessions of the Commission were no longer than two weeks.[107] The Commission noted that otherwise adjustments would need to be made to extend the fourteen-week allotment imposed during the 2012-2013 biennium for all sessions of the Commission and its working groups.

A. Forty-eighth session of the Commission

291. In the light of the considerations set out above, the Commission approved the holding of its forty-eighth session in Vienna from 29 June to 16 July 2015 (17 July being an official holiday). The Secretariat was requested to consider shortening the

[106] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 17* (A/58/17), para. 275.

[107] Ibid., *Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 258.

duration of the session by one week if the expected workload of the session would justify doing so.

B. Sessions of working groups

1. Sessions of working groups between the forty-seventh and the forty-eighth sessions of the Commission

292. In the light of the considerations set out above, the Commission approved the following schedule of meetings for its working groups:

(a) Working Group I (MSMEs) would hold its twenty-third session in Vienna from 17 to 21 November 2014 and the twenty-fourth session in New York from 13 to 17 April 2015;

(b) Working Group II (Arbitration and Conciliation) would hold its sixty-first session in Vienna from 15 to 19 September 2014 and its sixty-second session in New York from 2 to 6 February 2015;

(c) Working Group III (Online Dispute Resolution) would hold its thirtieth session in Vienna from 20 to 24 October 2014 and its thirty-first session in New York from 9 to 13 February 2015;

(d) Working Group IV (Electronic Commerce) would hold its fiftieth session in Vienna from 10 to 14 November 2014 and its fifty-first session in New York from 18 to 22 May 2015;

(e) Working Group V (Insolvency Law) would hold its forty-sixth session in Vienna from 15 to 19 December 2014 and its forty-seventh session in New York from 26 to 29 May 2015;

(f) Working Group VI (Security Interests) would hold its twenty-sixth session in Vienna from 8 to 12 December 2014 and its twenty-seventh session in New York from 20 to 24 April 2015.

293. The Commission authorized the Secretariat to adjust the schedule of working group meetings according to the needs of the working groups. The Secretariat was requested to post on the UNCITRAL website the final schedule of the working group meetings once the dates had been confirmed.

2. Sessions of working groups in 2015 after the forty-eighth session of the Commission

294. The Commission noted that tentative arrangements had been made for working group meetings in 2015 after its forty-eighth session, subject to the approval by the Commission at that session:

(a) Working Group I (MSMEs) would hold its twenty-fifth session in Vienna from 12 to 16 October 2015;

(b) Working Group II (Arbitration and Conciliation) would hold its sixty-third session in Vienna from 7 to 11 September 2015;

(c) Working Group III (Online Dispute Resolution) would hold its thirty-second session in Vienna from 5 to 9 October 2015;

(d) Working Group IV (Electronic Commerce) would hold its fifty-second session in Vienna from 9 to 13 November 2015;

(e) Working Group V (Insolvency Law) would hold its forty-eighth session in Vienna from 19 to 23 October 2015;

(f) Working Group VI (Security Interests) would hold its twenty-eighth session in Vienna from 14 to 18 December 2015.

Annex I

Draft convention on transparency in treaty-based investor-State arbitration

Preamble

The Parties to this Convention,

Recognizing the value of arbitration as a method of settling disputes that may arise in the context of international relations, and the extensive and wide-ranging use of arbitration for the settlement of investor-State disputes,

Also recognizing the need for provisions on transparency in the settlement of treaty-based investor-State disputes to take account of the public interest involved in such arbitrations,

Believing that the Rules on Transparency in Treaty-based Investor-State Arbitration adopted by the United Nations Commission on International Trade Law on 11 July 2013 ("UNCITRAL Rules on Transparency"), effective as of 1 April 2014, would contribute significantly to the establishment of a harmonized legal framework for a fair and efficient settlement of international investment disputes,

Noting the great number of treaties providing for the protection of investments or investors already in force, and the practical importance of promoting the application of the UNCITRAL Rules on Transparency to arbitration under those already concluded investment treaties,

Noting also article 1(2) and (9) of the UNCITRAL Rules on Transparency,

Have agreed as follows:

Scope of application

Article 1

1. This Convention applies to arbitration between an investor and a State or a regional economic integration organization conducted on the basis of an investment treaty concluded before 1 April 2014 ("investor-State arbitration").

2. The term "investment treaty" means any bilateral or multilateral treaty, including any treaty commonly referred to as a free trade agreement, economic integration agreement, trade and investment framework or cooperation agreement, or bilateral investment treaty, which contains provisions on the protection of investments or investors and a right for investors to resort to arbitration against contracting parties to that investment treaty.

Application of the UNCITRAL Rules on Transparency

Article 2

Bilateral or multilateral application

1. The UNCITRAL Rules on Transparency shall apply to any investor-State arbitration, whether or not initiated under the UNCITRAL Arbitration Rules, in

which the respondent is a Party that has not made a relevant reservation under article 3(1)(a) or (b), and the claimant is of a State that is a Party that has not made a relevant reservation under article 3(1)(a).

Unilateral offer of application

2. Where the UNCITRAL Rules on Transparency do not apply pursuant to paragraph 1, the UNCITRAL Rules on Transparency shall apply to an investor-State arbitration, whether or not initiated under the UNCITRAL Arbitration Rules, in which the respondent is a Party that has not made a reservation relevant to that investor-State arbitration under article 3(1), and the claimant agrees to the application of the UNCITRAL Rules on Transparency.

Applicable version of the UNCITRAL Rules on Transparency

3. Where the UNCITRAL Rules on Transparency apply pursuant to paragraph 1 or 2, the most recent version of those Rules as to which the respondent has not made a reservation pursuant to article 3(2) shall apply.

Article 1(7) of the UNCITRAL Rules on Transparency

4. The final sentence of article 1(7) of the UNCITRAL Rules on Transparency shall not apply to investor-State arbitrations under paragraph 1.

Most favoured nation provision in an investment treaty

5. The Parties to this Convention agree that a claimant may not invoke a most favoured nation provision to seek to apply, or avoid the application of, the UNCITRAL Rules on Transparency under this Convention.

Reservations

Article 3

1. A Party may declare that:

(a) It shall not apply this Convention to investor-State arbitration under a specific investment treaty, identified by title and name of the contracting parties to that investment treaty;

(b) Article 2(1) and (2) shall not apply to investor-State arbitration conducted using a specific set of arbitration rules or procedures other than the UNCITRAL Arbitration Rules, and in which it is a respondent;

(c) Article 2(2) shall not apply in investor-State arbitration in which it is a respondent.

2. In the event of a revision of the UNCITRAL Rules on Transparency, a Party may, within six months of the adoption of such revision, declare that it shall not apply that revised version of the Rules.

3. Parties may make multiple reservations in a single instrument. In such an instrument, each declaration made:

(a) In respect of a specific investment treaty under paragraph (1)(a);

(b) In respect of a specific set of arbitration rules or procedures under paragraph (1)(b);

(c) Under paragraph (1)(c); or

(d) Under paragraph (2);

shall constitute a separate reservation capable of separate withdrawal under article 4(6).

4. No reservations are permitted except those expressly authorized in this article.

Formulation of reservations

Article 4

1. Reservations may be made by a Party at any time, save for a reservation under article 3(2).

2. Reservations made at the time of signature shall be subject to confirmation upon ratification, acceptance or approval. Such reservations shall take effect simultaneously with the entry into force of this Convention in respect of the Party concerned.

3. Reservations made at the time of ratification, acceptance or approval of this Convention or accession thereto shall take effect simultaneously with the entry into force of this Convention in respect of the Party concerned.

4. Except for a reservation made by a Party under article 3(2), which shall take effect immediately upon deposit, a reservation deposited after the entry into force of the Convention for that Party shall take effect twelve months after the date of its deposit.

5. Reservations and their confirmations shall be deposited with the depositary.

6. Any Party that makes a reservation under this Convention may withdraw it at any time. Such withdrawals are to be deposited with the depositary, and shall take effect upon deposit.

Application to investor-State arbitrations

Article 5

This Convention and any reservation, or withdrawal of a reservation, shall apply only to investor-State arbitrations that are commenced after the date when the Convention, reservation, or withdrawal of a reservation, enters into force or takes effect in respect of each Party concerned.

Depositary

Article 6

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

Signature, ratification, acceptance, approval, accession

Article 7

1. This Convention is open for signature in Port Louis, Mauritius, on 17 March 2015, and thereafter at the United Nations Headquarters in New York by any (a) State; or (b) regional economic integration organization that is constituted by States and is a contracting party to an investment treaty.

2. This Convention is subject to ratification, acceptance or approval by the signatories to this Convention.

3. This Convention is open for accession by all States or regional economic integration organizations referred to in paragraph 1 which are not signatories as from the date it is open for signature.

4. Instruments of ratification, acceptance, approval or accession are to be deposited with the depositary.

Participation by regional economic integration organizations

Article 8

1. When depositing an instrument of ratification, acceptance, approval or accession, a regional economic integration organization shall inform the depositary of a specific investment treaty to which it is a contracting party, identified by title and name of the contracting parties to that investment treaty.

2. When the number of Parties is relevant in this Convention, a regional economic integration organization does not count as a Party in addition to its member States which are Parties.

Entry into force

Article 9

1. This Convention shall enter into force six months after the date of deposit of the third instrument of ratification, acceptance, approval or accession.

2. When a State or a regional economic integration organization ratifies, accepts, approves or accedes to this Convention after the deposit of the third instrument of ratification, acceptance, approval or accession, this Convention enters into force in respect of that State or regional economic integration organization six months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

Amendment

Article 10

1. Any Party may propose an amendment to the present Convention by submitting it to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the Parties to this Convention with a request that they indicate whether they favour a conference of Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of

the Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations.

2. The conference of Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus are exhausted and no consensus is reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the Parties present and voting at the conference.

3. An adopted amendment shall be submitted by the Secretary-General of the United Nations to all the Parties for ratification, acceptance or approval.

4. An adopted amendment enters into force six months after the date of deposit of the third instrument of ratification, acceptance or approval. When an amendment enters into force, it shall be binding on those Parties which have expressed consent to be bound by it.

5. When a State or a regional economic integration organization ratifies, accepts or approves an amendment that has already entered into force, the amendment enters into force in respect of that State or that regional economic integration organization six months after the date of the deposit of its instrument of ratification, acceptance or approval.

6. Any State or regional economic integration organization which becomes a Party to the Convention after the entry into force of the amendment shall be considered as a Party to the Convention as amended.

Denunciation of this Convention

Article 11

1. A Party may denounce this Convention at any time by means of a formal notification addressed to the depositary. The denunciation shall take effect twelve months after the notification is received by the depositary.

2. This Convention shall continue to apply to investor-State arbitrations commenced before the denunciation takes effect.

DONE in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed the present Convention.

Annex II

List of documents before the Commission at its forty-seventh session

Symbol	*Title or description*
A/CN.9/793	Provisional agenda, annotations thereto and scheduling of meetings of the forty-seventh session
A/CN.9/794	Report of Working Group II (Arbitration and Conciliation) on the work of its fifty-ninth session
A/CN.9/795	Report of Working Group III (Online Dispute Resolution) on the work of its twenty-eighth session
A/CN.9/796	Report of Working Group VI (Security Interests) on the work of its twenty-fourth session
A/CN.9/797	Report of Working Group IV (Electronic Commerce) on the work of its forty-eighth session
A/CN.9/798	Report of Working Group V (Insolvency Law) on the work of its forty-fourth session
A/CN.9/799	Report of Working Group II (Arbitration and Conciliation) on the work of its sixtieth session
A/CN.9/800	Report of Working Group I (MSMEs) on the work of its twenty-second session
A/CN.9/801	Report of Working Group III (Online Dispute Resolution) on the work of its twenty-ninth session
A/CN.9/802	Report of Working Group VI (Security Interests) on the work of its twenty-fifth session
A/CN.9/803	Report of Working Group V (Insolvency Law) on the work of its forty-fifth session
A/CN.9/804	Report of Working Group IV (Electronic Commerce) on the work of its forty-ninth session
A/CN.9/805	Bibliography of recent writings related to the work of UNCITRAL
A/CN.9/806	Status of conventions and model laws
A/CN.9/807	Planned and possible future work – Part I
A/CN.9/808	Activities of the UNCITRAL Regional Centre for Asia and the Pacific
A/CN.9/809	Coordination activities
A/CN.9/810	Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts
A/CN.9/811	Draft Model Law on Secured Transactions: Security Interests in Non-Intermediated Securities
A/CN.9/812	Settlement of commercial disputes: Draft convention on transparency in treaty-based investor-State arbitration
A/CN.9/813 and Add.1	Settlement of commercial disputes: Draft convention on transparency in treaty-based investor-State arbitration, Compilation of comments
A/CN.9/814 and Adds.1-5	UNCITRAL Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)
A/CN.9/815	Report of the Fourth International Insolvency Law Colloquium
A/CN.9/816	Planned and possible future work – Part II

Symbol	*Title or description*
A/CN.9/817	Online dispute resolution for cross-border electronic commerce transactions: Proposal by the Governments of Colombia, Kenya, Honduras and the United States of America
A/CN.9/818	Technical cooperation and assistance
A/CN.9/819	Possible future work in Public-Private Partnerships (PPPs) Discussion paper – Part I
A/CN.9/820	Possible future work in Public-Private Partnerships (PPPs) Discussion paper – Part II
A/CN.9/821	Possible future work in Public-Private Partnerships (PPPs) Report of the UNCITRAL colloquium on PPPs
A/CN.9/822	Planned and possible future work – Part III, Proposal by the Government of the United States of America: future work for Working Group II
A/CN.9/823	Planned and possible future work – Part IV, Proposal by the Government of Canada: possible future work on electronic commerce – legal issues affecting cloud computing